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No. 94-329

In The Supreme Court of the United States

October Term, 1994

Ronald W. Rosenberger, *et al.*,
Petitioners,

v.

The Rector and Visitors of the University of Virginia, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

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1. The decision below is a particularly stark example of doctrinal confusion and contradiction: the Fourth Circuit held that the University of Virginia's exclusion of religious periodicals from the Student Activities Fund ("SAF" or "Fund") is a violation of the viewpoint-neutral principles of the Free Speech and Press Clauses, but also held that this discrimination is required by the Establishment Clause. Pet. App. 39a. As we showed in the Petition, this holding conflicts with other appellate decisions in two ways. First (Pet. 15-19), the courts are split on the question of whether the Establishment Clause trumps what would otherwise be a free speech claim. Second (Pet. 19-20), the courts are split on whether the Establishment Clause can be violated by the neutral provision of benefits to a wide range of activities, religious as well as nonreligious. Moreover (Pet. 20-25), the decision

below is in conflict with several recent decisions of this Court (while admittedly consistent with older cases not easily reconcilable with current constitutional doctrine).

Nothing in the University's Brief in Opposition detracts in the slightest from the existence, importance, or recurring nature of this constitutional conflict. Instead, the University hopes to avoid the issue by the simple device of characterization. In the University's eyes, its deliberate exclusion of religious viewpoints is not "discrimination" but "neutrality" toward religion. Br. in Opp. 15, 16. If one accepts that premise (discrimination is really "neutrality") then the conflict perceived by the Court of Appeals ceases to exist and all the cases become "crystal clear" (Br. in Opp. 17). But the University's Brief begs the question: *why* is it "neutral" to exclude an otherwise eligible religious publication, solely on the basis of its religious viewpoint, when (as the University concedes, Br. in Opp. 17), "neutrality" normally requires that the University distribute funds on the basis of objective factors, not including the viewpoint of the publication? The University admits it would not be "neutral" toward gay rights if it refused to subsidize a publication devoted to propagating the point of view of the Gay & Lesbian Students Association. *Id.*, citing *Gay & Lesbian Students Ass'n* v. *Gohn*, 850 F.2d 361 (8th Cir. 1988). Why is "neutrality" different for religion?

Perhaps there is an answer to this. But it is hard to deny—and the University does not deny—that the lower courts are perplexed and divided about how to answer it. Sometimes religious speakers are given equal rights; sometimes they are treated as second-class citizens. See Pet. 18-19 & nn. 10-11. The Fourth Circuit, to its credit, did not attempt to hide behind euphemisms. It openly acknowledged that the University's Guideline "creates an uneven playing field on which the advantage is tilted towards CIOs engaged in wholly secular modes of expression" (Pet. App. 26a). The question—whether this discrimination is required by the Establishment Clause—

is squarely presented in this case. This Court's guidance is urgently needed.

2. A large part of the University's Brief in Opposition is devoted to various attempts to avoid the issue. We will address each of these in turn.

a. The University begins with the assertion (Br. in Opp. 6-7) that "[t]he holding below turns on the special circumstances of a state institution of higher education, which must make distinctions in allocating limited funds to student activities and organizations in order to fund those activities most related to its educational purpose." But as the opinion below reveals, *nothing* in the Fourth Circuit's judgment "turns" on any "special circumstances" unique to universities. Rather, the reasoning is broad. Denial of assistance on account of *Wide Awake*'s religious message, according to the court below, is a penalty on the exercise of free speech rights; but providing benefits, even on a neutral basis, would "advance religion" and "entangle" church and state in violation of the Establishment clause. As the Petition demonstrated, the same doctrinal conflict between Speech and Establishment has appeared in a wide variety of contexts. Pet. 18-19 & nn. 10-11.

b. The University admits that there is "the appearance of a conflict among various courts and opinions" (Br. in Opp. 11), but argues against review on the ground that none of the cases petitioners have cited involved "this identical legal issue." *Id.* at 10. But that depends on how narrowly the issue is framed.

Even if one treats this case as solely about public university student activities funds, the University's claim is inaccurate. *Tipton v. University of Hawaii*, 15 F.3d 922 (9th Cir. 1994), also raised the constitutionality of excluding otherwise eligible student organizations from student activities funds on account of their religious character. The only substantial difference between the two cases is that *Tipton* was solely a facial challenge. To be sure, as the University points out (Br. in Opp. 10), the

Ninth Circuit's constitutional analysis in *Tipton* is at odds with that of the Fourth Circuit here (though the utlimate result, upholding discriminatory exclusion of student religious speech, is the same). The Ninth Circuit essentially upheld University discretion, while the Fourth Circuit held that the Establishment Clause compels the University to exclude religious publications. This disagreement over constitutional principles is a reason for this Court to grant the Petition, not to deny it. Moreover, *Gay & Lesbian Students Ass'n v. Gohn*, 850 F.2d 361 (8th Cir. 1988), is "identical" to this case, except that the viewpoint involved in *Gohn* is secular. The University may think that is a persuasive reason for reaching opposite outcomes. Petitioners do not.

More fundamentally, in evaluating the certworthiness of this case, there is no reason to confine attention to cases raising the "identical" legal issue. The point is that the governing *principle* of the decision below is of recurring significance, and has divided the courts of appeals in a wide variety of contexts. This Court has frequently granted certiorari in Establishment Clause cases that raise important general principles of law, even when the particular context is unusual and the "identical" issue is unlikely ever to repeat itself (see, *e.g.*, *Board of Education of Kiryas Joel v. Grumet*, 114 S. Ct. 2481 (1994)), or where lower court opinions on the specific issue are not in conflict (see, *e.g.*, *Zobrest v. Catalina Foothills School Dist.*, 113 S. Ct. 2462 (1993)).

c. The University argues strenuously that its exclusion of *Wide Awake* was not based on its viewpoint. See Br. in Opp. 8-9.[1] This argument is completely untenable

[1] The University denies (Br. in Opp. 6) that the Fourth Circuit found that *Wide Awake* had been excluded on the basis of its viewpoint, suggesting that petitioners confuse the concepts of content and viewpoint discrimination. We are not sure why this matters, since content discrimination, in itself, is presumptively unconstitutional and requires strict scrutiny. *Simon & Schuster, Inc. v. New York State Crime Victims Bd.*, 112 S. Ct. 501, 508 (1991); *Regan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984). But in any event, the Fourth Circuit unquestionably *did* find the exclusion of *Wide Awake* to be based on viewpoint. Four times in its opinion, the Court referred to "content and viewpoint discrimination" as the gravamen of the constitutional complaint. Pet. App. 17a, 21a. Moreover, the central free speech holding of the court is as follows:

> [W]hen funds are made available to CIOs generally, they must be distributed in a viewpoint-neutral manner, absent considerations of equal constitutional dignity. Although government need not subsidize exercise of a constitutional right, the lack of an affirmative duty of financial support does not mean that government may, in general, penalize exercise of constitutional rights by withholding from their possessors an otherwise discretionary benefit. We conclude that the Rector and Visitors' erection of a prior restraint against University funding of such "religious activities" as the publication of religious expression in *Wide Awake* constitutes precisely such a penalty. . . . The Rector and Visitors' funding proscription thus creates an uneven playing field on which the advantage is tilted towards CIOs engaged in wholly secular modes of expression.

Pet. App. 25a-26a (citations and paragraph break omitted). The University calls this finding of viewpoint discrimination "dictum" (Br. in Opp. 6); but manifestly it is not.

[2] The University argues (Br. in Opp. 7-8) that the exclusion of "religious activities" is not discriminatory because this is "only

after this Court's decision in *Lamb's Chapel v. Center Moriches School Dist.*, 113 S. Ct. 2141 (1993). In *Lamb's Chapel*, the government excluded any group that would use its property "for religious purposes." *Id.* at 2144. This is indistinguishable from the University Guideline, which excludes "religious activities." In *Lamb's Chapel*, the restriction was applied to a group that wished to show a film addressing issues of child rearing from a religious perspective. In this case, the University applied the restriction to a group that wished to produce a magazine addressing a variety of campus, personal, and community issues from a religious perspective. This Court had no hesitation in treating the exclusion in *Lamb's Chapel* as an instance of viewpoint discrimination. See 113 S. Ct. at 2147. The same is true here.[2]

d. The University raises the spectre (Br. in Opp. 11) that, if the government cannot discriminate against religious speakers, "all other forms of nonreligious expression . . . would have to be funded also," which would "effectively emasculate" the right of the University to make academic judgments. But as the University concedes (Br. in Opp. 12; 17), the University is *already* forbidden to discriminate against nonreligious groups on the basis of viewpoint. This has apparently been accomplished without disruption. We only ask that similar protection be extended to religious viewpoints.[3]

e. The University claims that reversal of the decision below would "harm" religion, because SAF funding would lead to "supervision and audits." Br. in Opp. 15. Whatever the merits of this argument in the abstract, it has no application here. University funds would not go to the student group; they would go to the printer. The University is free to audit and supervise the direct recipient of the funds—the printer—to make sure that they are

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one of many categories of student groups which are ineligible for funding." But this *is* the only category that is based on point of view. The exclusions for "honoraria or similar fees; . . .; social entertainment or related expenses; philanthropic contributions and activities; political activities; and activities which would jeopardize the University's tax exempt status" (Pet. App. 62a-63a) are *not* based on viewpoint. Nor are the exclusions of fraternities, sororities, honor societies, or political organizations based on viewpoint. It is significant that—whatever the term "political activities" may mean—it does not extend to a publication that advocates a political point of view, for many of the funded publications at the University do that. In any event, in *Lamb's Chapel*, religious groups were not the only groups excluded from the facilities. That did not dissuade the Court from finding that the religious exclusion was viewpoint discriminatory.

[3] Similarly, the University expresses worry (Br. in Opp. 21-22) that it might have to provide a refund of the mandatory student activities fee to those who object to the funded activity. But the University already assumed that risk when it began to fund controversial secular activities. There is no difference, for purposes of refund litigation, between secular and religious speech.

used for properly authorized purposes. There would be no legitimate occasion to audit or supervise Wide Awake Productions itself.

3. The University's only serious argument is that cash subsidies must be treated differently than other forms of public benefit (such as access to government land or meeting rooms, tax subsidies, police and fire protection, and in-kind assistance to religious schools). See Br. in Opp. 13-15, 17-21. We do not (indeed, we cannot) claim that the University's position is wholly without support in some of this Court's older precedents.[4] But the University's argument simply illustrates the difficulty and importance of this case. It is our position that the outmoded distinctions between various forms of aid have no relation to the purposes of the Establishment Clause and should be replaced by a general requirement of neutrality. The University takes the opposite position. This is a recurring and imporant issue, and warrants consideration by this Court.

4. The Brief in Opposition is itself an argument for certiorari. If there is any doubt that university administrators and others who have the responsibility for interpreting and enforcing constitutional rights in the first instance have a distorted notion of the protections for religious speech under the First Amendment, the Brief in Opposition dispels it. "If religion cannot be treated differently [*i.e.*, less favorably] than political ideas, ideology,

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[4] The University plainly overstates its case when it declares (Br. in Opp. 17) that "[n]o court has ever held that direct funding of religious activities and programs is neutral." Among other decisions, this overlooks *Witters v. Washington Dep't of Services for the Blind*, 474 U.S. 481 (1986), in which this Court unanimously rejected the argument that the Establishment Clause prevents a state from paying the tuition for religious courses at a Bible College. To pay tuition for religious teaching is not constitutionally distinguishable from paying printing costs for a religiously-oriented publication.

or viewpoints on various issues," the University asks (Br. in Opp. 22-23), "what does the Establishment Clause stand for?" Let us state our answer: the Establishment Clause stands for neutrality, not hostility, toward religion. It prevents the government from favoring or preferring religious over secular ideas, institutions, or people, in such a way as to induce or encourage the practice of one religion, or religion in general. But it does not require discrimination against religious speakers.

The University's position in this case, we believe, is symptomatic of a widespread misunderstanding about the fundamental principles of religious freedom under the First Amendment. This case provides an ideal opportunity to dispel that misunderstanding.

CONCLUSION

For these reasons, and those stated in the Petition, this Court should grant the Petition for Certiorari.

Respectfully submitted,

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VENUE

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the claims occurred in the County of Albemarle, Commonwealth of Virginia, which is the site of the University of Virginia.

PARTIES

5. Plaintiff RONALD W. ROSENBERGER, a student at the University of Virginia, is presently a resident of the Commonwealth of Virginia and was a resident of the Commonwealth of Virginia at all times relevant herein. The unincorporated organization of which he is a member, plaintiff WIDE AWAKE PRODUCTIONS, is and was at all times relevant herein a Contracted Independent Organization ("CIO") at the University of Virginia, with its principal operations in the County of Albemarle, Commonwealth of Virginia. The publication of which he is Editor-in-Chief, plaintiff WIDE AWAKE MAGAZINE, is and was at all times relevant herein a journal of news, commentary and opinion published and distributed by plaintiff WIDE AWAKE PRDUCTIONS at the University of Virginia in the County of Albemarle, Commonwealth of Virginia. Plaintiff ROBERT J. PRINCE is a student at the University of Virginia and the Managing Editor of WIDE AWAKE MAGAZINE. Plaintiff GREGORY W. MOURAD is a student at the University of Virginia and Executive Editor of WIDE AWAKE MAGAZINE. Plaintiffs ROBERT J. PRINCE and GREGORY W. MOURAD are and/or at all times relevant herein were residents of or located in the County of Albemarle, Commonwealth of Virginia. Unless otherwise specified herein, plaintiffs will be referred to collectively as "*Wide Awake.*"

6. Defendants EDWARD E. ELSON, W.L. LYONS BROWN, JR., ROBERT G. BUTCHER, JR., N. THOMAS CONNALLY, M.D., HOVEY S. DABNEY, WALLER H. HORSLEY, J. THOMAS HULVEY,

M.D., EVANS B. JESSEE, PATRICIA M. KLUGE, ARNOLD H. LEON, LEIGH B. MIDDLEDITCH, JR., ELIZABETH D. MORIE, FREDDIE W. NICHOLAS, SR., S. BUFORD SCOTT, JESSE B. WILSON, III, THOMAS E. WORRELL, JR., ADAM S. ARTHUR, and ALEXANDER G. GILLIAM, JR. are sued in their capacities as members of defendant RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA ("Board of Visitors"). Upon information and belief, the Board of Visitors of the University of Virginia is a corporation established by the General Assembly of the Commonwealth of Virginia ("General Assembly"). The Board of Visitors is subject to the control of the General Assembly of the Commonwealth of Virginia. The members of the Board of Visitors are appointed by the Governor of Virginia. The Board of Visitors, in accordance with the Constitution of the Commonwealth of Virginia and with law, formulates policy, makes regulations and exercises such control over the University of Virginia as it deems expedient. Upon information and belief, the Board of Visitors may lawfully delegate this power. Under authority of the General Assembly, the Board of Visitors has exclusive jurisdiction over the internal organization, government and management of the University of Virginia. The University of Virginia is an institution of higher education that receives public funds from the Commonwealth of Virginia.

7. Defendant RONALD J. STUMP is and was at all times relevant herein Associate Dean of Students at the University of Virginia and Chairperson of the Student Activities Committee of the University of Virginia. Defendant RONALD J. STUMP is sued in his capacity as Associate Dean of Students at the University of Virginia and Chairperson of the Student Activities Committee of the University of Virginia. The Student Activities Committee is a University of Virginia committee composed of faculty members, administrators and students. The Student Activities Committee is charged by the Vice Presi-

dent for Student Affairs of the University of Virginia to provide oversight of the student activities fee fund and its allocation by the Student Council.

GENERAL ALLEGATIONS

8. As provided for in the Code of Virginia Title 23, Chapter 9, Article 2, Sections 23-69 to 23-80, the Board of Visitors is charged with the authority to manage the affairs of the University of Virginia. One of its responsibilities is the general oversight of student activities. To this end, the Board of Visitors has adopted policies with regard to the operation and funding of student organizations. Such policies include the requirement that the Board of Visitors (or its delegate) approve the constitutions and charters of these organizations; insure that these organizations adhere to all state, city and university regulations and statutes; and establish guidelines for the funding of such organizations from Student Activities Fund ("SAF") monies.

9. The Student Council of the University of Virginia is a Special Status Student Organization that conducts its affairs pursuant to a delegation of authority from the Board of Visitors. Currently and at all times relevant herein, the Board of Visitors sets forth and has set forth the guidelines and procedures for the distribution of SAF funds to Contracted Independent Organizations. Currently and at all times relevant herein, the Student Council implements and has implemented these guidelines and procedures.

10. The Student Council has a number of subcommittees, including an Appropriations Committee. The Appropriations Committee is chaired by the Student Council's Vice-President for Student Organizations.

11. During the period relevant to this lawsuit, the Student Council, upon recommendation of its Appropriations Committee, has regularly funded CIOs from SAF

funds. Upon information and belief, this practice dates back at least to 1973.

12. Upon information and belief, the University of Virginia has charged at all times relevant herein and currently charges each student a compulsory student activity fee of $14 per semester. There is no procedural or other mechanism by which a student may decline to pay the fee. These compulsory student fees are deposited into the University of Virginia Student Activities Fund.

13. Upon information and belief, there are approximately 343 CIOs at the University of Virginia. Upon information and belief, approximately 100 CIOs were funded with SAF monies during the 1990-1991 academic year under criteria and guidelines established by the Board of Visitors. Upon information and belief, acting pursuant to its authority from the Board of Visitors, the Student Council allocated approximately $237,662.00 to CIOs for that time period.

14. The Board of Visitors guidelines that are applied by the Student Council prohibit the funding of "religious activities" with SAF monies.

15. Upon information and belief, CIOs receiving SAF funding in the past have included organizations that express religious beliefs and engage in religious activities. The Student Council has previously funded with SAF monies, for example, a student gospel group, Black Voices. Upon information and belief, in the hearings that are part of the SAF funding process, the representative of Black Voices stated that the group engages in religious activity. Upon information and belief, the Student Council has also funded in the past and continues to fund with SAF money the Muslim Students Association, the Jewish Law Students Association, and the C.S. Lewis Society. The constitutions, charters and public statements and actions of these CIOs indicate that (at the time the defendants agreed to fund them) they engaged in and continue to engage in religious activity and expression.

16. Upon information and belief, acting pursuant to its authority from the Board of Visitors, the Student Council uses and has used in the past SAF funds to support at least fourteen "student news, information, opinion, entertainment or academic communications media groups." These funded publications and organizations have expressed and continue to express and contain both religious and secular matter.

17. Certain other SAF-funded student organizations express particular worldviews which are often inconsistent with or antagonistic to various religious beliefs. These funded CIOs include organizations that advocate gay and lesbian viewpoints, environmentalism, feminism, animal "rights," "prisoners' rights," and abortion "rights."

18. In January of 1991, Plaintiff RONALD W. ROSENBERGER, on behalf of plaintiffs WIDE AWAKE PRODUCTIONS and WIDE AWAKE MAGAZINE, submitted an application for Student Activities Fund benefits to the Student Council Appropriations Committee. This application for funding was in the amount of $5,862.00 to support the publication of *Wide Awake* magazine.

19. On or about February 26, 1991 the Student Council Appropriations Committee turned down plaintiffs' request for Student Activities Fund funding. A February 26, 1991 letter from the Student Council's Vice President for Student Organizations to plaintiff RONALD W. ROSENBERGER stated that the reason for the denial of funding was that the Student Council Appropriations Committee had "determined your organization's request could not be funded as it is a religious activity. The determination was made after reviewing your first issue of *Wide Awake*."

20. No reason other than the alleged status of *Wide Awake* as a "religious activity" was offered as a basis for the denial of funding.

21. The application of *Wide Awake* for Student Activities Fund benefits conformed with all applicable, content-neutral Student Activities Fund requirements. In particular, at least 51% of *Wide Awake*'s members are students; the organization's officers are all full-time, fee-paying students; the group keeps an updated copy of its constitution on file at the University of Virginia Student Council offices; and *Wide Awake* has signed all anti-discrimination disclaimers that are required.

22. Pursuant to procedures established by the Board of Visitors and implemented by the Student Council, *Wide Awake* appealed the Student Council Appropriations Committee's denial of funding to the full Student Council on or about March 3, 1991.

23. On or about March 19, 1991 the full Student Council denied *Wide Awake*'s appeal and affirmed the Student Council Appropriations Committee's denial of funding. Upon information and belief, the Student Council stated no reasons for the denial of benefits to *Wide Awake* other than its alleged status as a "religious activity."

24. Pursuant to Board of Visitors and Student Council procedures, *Wide Awake* appealed the decision of the Student Council to the Student Activities Committee.

25. On or about April 8, 1991 the Student Activities Committee held a public hearing on the *Wide Awake* appeal.

26. On or about April 15, 1991 the Student Activities Committee voted to reaffirm the denial of funding to *Wide Awake*. Upon information and belief, the Student Activities Committee stated no reasons for the denial of benefits to *Wide Awake* other than its alleged status as a "religious activity."

27. *Wide Awake* has exhausted all internal and administrative procedures provided by the University of Virginia.

28. Defendants have denied and continue to deny SAF benefits to plaintiffs solely and expressly on the basis of plaintiffs' viewpoint or the content of their expression.

29. Because plaintiffs have been denied SAF benefits, they are denied access to certain space and facilities at the University of Virginia, including but not limited to computers, printers and other equipment located in Peabody Hall at the University of Virginia.

30. Upon information and belief, the facilities in Peabody Hall containing computers, printers and other equipment are available for use and have been available for use at all times relevant herein by SAF-funded Contracted Independent Organizations upon payment of a nominal fee.

31. By establishing, implementing and administering the SAF and the SAF fund-allocation policy, defendants have created a limited public forum that offers access to benefits designed to support and encourage the exchange of a variety of viewpoints on the campus of the University of Virginia.

32. Defendants have impermissibly and unlawfully denied plaintiffs access to the limited public forum because of plaintiffs' viewpoint or the content of their speech.

33. Defendants cannot demonstrate a compelling interest sufficient to justify the denial of SAF benefits to plaintiffs, nor can defendants demonstrate that the denial of funding is a narrowly drawn means to satisfy any such state interest.

COUNT ONE: VIOLATION OF FREE SPEECH, FREE PRESS AND FREE ASSOCIATION

34. The allegations contained in paragraphs 1 through 33 are incorporated herein by this reference.

35. Although defendants have provided SAF funding to a wide variety of CIOs that engage in religious and

secular expression, defendants have illegally and unconstitutionally denied plaintiffs SAF funding based solely on the content or viewpoint of plaintiffs' speech, communications, identity, activities, and/or membership.

36. Plaintiffs have unjustifiably and unlawfully been denied benefits to which they were and are entitled as Contracted Independent Organizations under the Board of Visitors guidelines as implemented by the Student Council. This loss was the result of state action. This state action violated and continues to violate plaintiffs' rights of free speech, free press and free association under the First Amendment to the United States Constitution and under Article I, Section 12 of the Virginia Constitution. The denial of SAF funds to plaintiffs constitutes impermissible viewpoint and content discrimination. There exists no compelling state interest to justify the defendants' actions. Moreover, whatever interest the state may have in discriminating on the basis of the plaintiffs' viewpoint or the content of their expression can adequately be served by a less restrictive regulation.

37. Defendants' guidelines and definitions for allocating SAF funds to CIOs are unlawfully vague in that persons of common intelligence must necessarily guess at their meaning and differ as to their application, and overbroad in that they reach constitutionally protected activity.

38. By virtue of the unlawful policies and conduct of defendants, plaintiffs have suffered and continue to suffer injury to their rights of free speech, free press and free association, and to the furtherance of their lawful activities.

COUNT TWO: VIOLATION OF FREE EXERCISE OF RELIGION

39. The allegations contained in paragraphs 1 through 38 are incorporated herein by this reference.

40. The Free Exercise Clause of the First Amendment to the United States Constitution, the Free Exercise Clause of Article I, Section 16 of the Virginia Constitution, and

Code of Virginia Title 57, Chapter 1, Sections 57-1 and 57-2 (the Virginia Act for Religious Freedom) prohibit government discrimination in the allocation of benefits or imposition of burdens based upon an individual's or group's religious beliefs, character, or affiliation, or based upon the religious content of their expression.

41. Defendants have impermissibly and unlawfully denied plaintiffs SAF benefits generally available to other students and CIOs. This denial was based upon plaintiffs' religious beliefs, character, affiliation, speech and association.

42. Defendants have not shown and cannot show that denying plaintiffs the SAF funds to which they are lawfully entitled is necessary to serve a compelling state interest, nor can defendants show that such a denial is a narrowly drawn means of achieving that interest.

43. Defendants' conduct deprived and continues to deprive plaintiffs of their right to free exercise of religion as guaranteed under the First and Fourteenth Amendments to the United States Constitution; under Article I, Section 16 of the Virginia Constitution; and under Code of Virginia Title 57, Chapter 1, Sections 57-1 and 57-2 (the Virginia Act for Religious Freedom).

44. Defendants' conduct constitutes a failure to give reasonable accommodation to plaintiffs' religious beliefs.

45. By virtue of the unlawful policies and conduct of defendants, plaintiffs have suffered and continue to suffer injury to their rights of religious freedom and to the furtherance of their lawful activities.

COUNT THREE: VIOLATION OF EQUAL PROTECTION OF THE LAWS

46. The allegations contained in paragraphs 1 through 45 are incorporated herein by this reference.

47. By denying plaintiffs the benefits to which other students and CIOs are entitled, defendants unlawfully and unconstitutionally treat plaintiffs differently from other

similarly situated students and student organizations on the basis of the content or viewpoint of their speech, association, beliefs, character, affiliation, identity and activity.

48. By denying plaintiffs the benefits that other students and CIOs engaging in religious speech and activities receive and have received, defendants unlawfully and unconstitutionally treat defendants differently from other similarly situated students and student organizations on the basis of their religious speech, association, beliefs, character, affiliation, identity and activity.

49. Defendants' conduct under color of state law violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Anti-Discrimination Clause of Article I, Section 11 of the Virginia Constitution in that it constitutes discrimination on a suspect basis and violates fundamental constitutional rights. This violation is not justified by a compelling state interest and is not accomplished by narrowly drawn means. Defendants have singled out plaintiffs and denied them SAF benefits based upon the content or viewpoint of their group, their speech, their expression and their association.

50. Plaintiffs have suffered and continue to suffer injury to their rights of equal protection under the law, and to the furtherance of their lawful activities, by virtue of the unlawful policies and conduct of defendants.

COUNT FOUR: VIOLATION OF 42 U.S.C. § 1983

51. The allegations contained in paragraphs 1 through 50 are incorporated herein by this reference.

52. Defendants' denial of plaintiffs' free speech, free press, free association, free exercise of religion and equal protection rights under color of state law violates Chapter 22, Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983 (1988).

PETITION FOR RELIEF

53. The allegations contained in paragraphs 1 through 52 are incorporated herein by this reference.

54. Plaintiffs have no plain, speedy and adequate remedy at law.

55. Plaintiffs have exhausted all University of Virginia internal and administrative procedures.

56. Plaintiffs are suffering, and will continue to suffer, irreparable injury for the period of the continued violation of their constitutional rights.

57. WHEREFORE, having stated claims against the defendants under the United States Constitution, the Virginia Constitution, 42 U.S.C. §§ 1983 and 1988, and other applicable law, plaintiffs petition this Court for the following relief:

A. a declaratory judgment that the conduct of the various named defendants in establishing and applying a policy for the University of Virginia, the Rector and Visitors of the University of Virginia, the Student Council of the University of Virginia, and the Appropriations Committee of the Student Council, which refuses to allow the same benefits to plaintiffs as to other similarly situated student organizations (benefits including, but not limited to, eligibility to receive Student Activities Fund ("SAF") funds) and which denies plaintiffs SAF funding solely and expressly because of the content or viewpoint of their speech violates plaintiffs' rights to freedom of speech, freedom of association, freedom of the press, free exercise of religion and to equal protection under the law, as guaranteed by the First and Fourteenth Amendments to the United States Constitution; by Article I, Sections 11, 12 and 16 of the Virginia Constitution; and by the Virginia Act for Religious Freedom, Code of Virginia Title 57, Chapter 1, Sections 57-1 and 57-2;

B. a declaratory judgment that the above-described conduct of the various named defendants denies plaintiffs their civil rights under color of state law in violation of Chapter 22, Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983 (1988);

C. a permanent order enjoining defendants from maintaining and applying a policy of discriminating against plaintiffs in the appropriation of Student Activities Fund benefits or in any other manner on the basis of plaintiffs' speech or on the basis of the content or viewpoint of the speech of the Contracted Independent Organization of which plaintiffs are members or of the journals, magazines, newsletters or other things that plaintiffs publish or may publish in the future;

D. such compensatory damages for violation of plaintiffs' federal and state constitutional and statutory rights as the Court may find just and proper, including but not limited to $5,862.00, the sum of the SAF funds unlawfully denied plaintiffs, plus interest thereon from the date of such denial;

E. an order awarding plaintiffs reasonable costs and attorneys' fees pursuant to Section 2 of the Civil Rights Attorney's Fees Award Act of 1976, as amended, 42 U.S.C. § 1988 (1988); and

F. such other relief as the Court deems just and proper.

Dated: Charlottesville, Virginia
July 11, 1991

Respectfully submitted,

/s/ James R. Murray
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

(Title Omitted in Printing)

ANSWER

Defendants, by counsel, answer the Complaint in this action as follows:

Nature and Summary of the Action

1. Paragraph 1 generally sets forth legal conclusions for which no answer is required.

2. Paragraph 2 generally sets forth legal conclusions in the context of the nature of relief the Plaintiffs seek, and thus no answer is required. It is admitted that the named Plaintiffs are past and present students of the University of Virginia. It is denied that WIDE AWAKE PRODUCTIONS, as well as other Contracted Independent Organizations (CIO), is an organizational unit or component "of" the University of Virginia. With respect to the allegation in Paragraph 2.D. concerning the request for compensatory damages in the amount of $5,862.00, there is no assurance that even if WIDE AWAKE PRODUCTIONS were deemed eligible for student activity funding (SAF) the organization would have received this requested amount in whole or in part. Any remaining factual allegations in Paragraph 2 are denied.

Jurisdiction

3. The allegations in Paragraph 3 set forth legal conclusions for which no answer is required.

Venue

4. The allegations in Paragraph 4 set forth legal conclusions for which no answer is required.

Parties

5. Regarding Paragraph 5, Defendants deny that the WIDE AWAKE magazine is (or was) exclusively or principally "a journal of news, commentary, and opinion", and further state that the editor has stated that the mission of the organization and the magazine it publishes is (and has been) to challenge Christians to live according to their faith and to encourage students to consider what a personal relationship with Jesus Christ means. On information and belief, the remaining factual allegations in Paragraph 5 are admitted.

6. The allegations in Paragraph 6 are admitted. Defendants further state that the student activity fees administered by the Student Council, and allocated to eligible student organizations constitute public or state funds.

7. The allegations in Paragraph 7 are admitted.

General Allegations

8. Regarding Paragraph 8, Defendants deny that the Board of Visitors (directly or through delegated agents) approves the constitution and charters of student organizations or CIOs; nor does the Board "insure" that such organizations adhere to all State and City regulations and statutes. Defendants further state that, in administering and allocating public funds entrusted to the University, the Board of Visitors and its designees are legally obligated to comply with federal and State constitutional and statutory constraints, including the prohibition against financial support or subsidy of sectarian organizations or religious activities. The remaining factual allegations in Paragraph 8 are admitted.

9. The allegations in Paragraph 9 are admitted.

10. The allegations in Paragraph 10 are admitted.

11. The allegations in Paragraph 11 are admitted.

12. Regarding Paragraph 12, only full-time students are charged the student activity fee. The remaining allegations in Paragraph 12 are admitted.

13. The allegations in Paragraph 13 pertaining to the number of CIOs at the University of Virginia, the number or proportion of CIOs that were funded by the Student Council, and the total amount allocated by the Student Council are not accurate. In all other respects, the allegations in Paragraph 13 are admitted.

14. The allegations in Paragraph 14 are admitted.

15. Regarding Paragraph 15, it is admitted that the student organization, Black Voices, was funded for the 1990-91 academic year, but as a cultural—and not a religious—activity. It is further admitted that a representative of Black Voices remarked during the SAF appropriation process that the organization engaged in religious activity, but upon further discussion of the applicable definition of religious activity in the guidelines, the representative expressly stated that the organization is not a religious activity. Furthermore, during the 1990-91 year the Black Voices organization determined that it had shifted from being a cultural activity to a religious activity and consequently resolved not to seek SAF funding for the 1991-92 academic year. It is also admitted that the Muslim Students Association, the Jewish Law Students Association, and the C. S. Lewis Society are organizations that have been funded in the past as cultural—and not religious—activities. The remaining factual allegations in Paragraph 15 are denied.

16. Regarding Paragraph 16, it is admitted that student publications that have received SAF funds in the past have occasionally and incidentally contained opinions or articles that express religious viewpoints. However, unlike WIDE AWAKE magazine whose overt and self-avowed purpose is to provide a pervasively sectarian perspective, such other funded student publications are secular in

nature and any religious viewpoints are invariably incidental parts of their activities. Thus, in this and all other respects the allegations in Paragraph 16 are denied.

17. Regarding Paragraph 17, it is admitted only that certain SAF-funded student organizations express varying ideological viewpoints. The remaining allegations of Paragraph 17 are denied.

18. The allegations in Paragraph 18 are admitted.

19. The allegations in Paragraph 19 are admitted.

20. The allegations in Paragraph 20 are denied.

21. On information and belief, the allegations in Paragraph 21 are admitted.

22. The allegations in Paragraph 22 are admitted.

23. Regarding Paragraph 23, it is admitted only that on or about March 19, 1991, the full Student Council denied WIDE AWAKE's appeal and affirmed the Student Council Appropriations Committee's denial of funding. The remaining factual allegations in Paragraph 23 are denied.

24. The allegations in Paragraph 24 are admitted.

25. The allegations in Paragraph 25 are admitted.

26. Regarding Paragraph 26, it is admitted only that the Student Activities Committee unanimously voted to reaffirm the denial of funding to WIDE AWAKE. The remaining factual allegations in Paragraph 26 are denied.

27. The allegations in Paragraph 27 are admitted.

28. The allegations in Paragraph 28 are denied.

29. The allegations in Paragraph 29 are denied.

30. The allegations in Paragraph 30 are denied.

31. The allegations in Paragraph 31 are denied.

32. The allegations in Paragraph 32 are denied.

33. The allegations in Paragraph 33 are denied.

34. The allegations incorporated in Paragraph 34 are variously admitted or denied as specified in the responses reflected in the preceding paragraphs.

35. Regarding Paragraph 35, Defendants state that only CIOs that are not religious, honorary, philanthropic, social, or political are eligible for SAF funding under the Board of Visitors guidelines. The remaining allegations in Paragraph 35 are denied.

36. The allegations in Paragraph 36 are denied.

37. The allegations in Paragraph 37 are denied.

38. The allegations in Paragraph 38 are denied.

39. The allegations incorporated in Paragraph 39 are variously admitted or denied as specified in the responses reflected in the preceding paragraphs.

40. The allegations in Paragraph 40 set forth legal conclusions for which no answer is required.

41. The allegations in Paragraph 41 are denied.

42. The allegations in Paragraph 42 are denied.

43. The allegations in Paragraph 43 are denied.

44. The allegations in Paragraph 44 are denied.

45. The allegations in Paragraph 45 are denied.

46. The allegations incorporated in Paragraph 46 are variously admitted or denied as specified in the responses reflected in the preceding paragraphs.

47. The allegations in Paragraph 47 are denied. Defendants further state that only CIOs that are not religious, honorary, philanthropic, social, or political are eligible for SAF funding.

48. The allegations in Paragraph 48 are denied. Defendants further state that only CIOs that are not religious, honorary, philanthropic, social, or political are eligible for SAF funding.

49. Regarding Paragraph 49, Defendants state that the University and its agents are prohibited under the United

States and Virginia constitutions from financially funding or subsidizing religious organizations or activities. Defendants further state that as part of its request for SAF funds, the WIDE AWAKE representative admitted that the organization's publication was "a forum for Christian expression" and a means "to challenge Christians (and how) to live . . .". In this and other respects, therefore, the allegations in Paragraph 49 are denied.

50. The allegations in Paragraph 50 are denied.

51. The allegations incorporated in Paragraph 51 are variously admitted or denied as specified in the responses reflected in the preceding paragraphs.

52. The allegations in Paragraph 52 set forth legal conclusions for which no answer is required.

Petition for Relief

53. The allegations incorporated in Paragraph 53 are variously admitted or denied as specified in the responses reflected in the preceding paragraphs of this Answer.

54. The allegations in Paragraph 54 set forth legal conclusions for which no answer is required.

55. The allegations in Paragraph 55 are admitted.

56. The allegations in Paragraph 56 set forth legal conclusions for which no answer is required.

57. The allegations in Paragraph 57 set forth legal conclusions for which no answer is required.

AFFIRMATIVE DEFENSES

As required by Rule 8(c), Fed. Rules Civ. Proc., Defendants assert the following affirmative defenses to the Complaint:

1. Plaintiffs' quest for retroactive monetary relief is barred by the Eleventh Amendment to the United States

Constitution for the reasons set forth in the accompanying Motion to Dismiss.

2. At all times relevant to the matters alleged in the Complaint, Defendants acted in good faith compliance with the existing law and in good faith exercise of their official duties.

Respectfully submitted,

RONALD J. STUMP

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, *et al.*

By: /s/ James J. Mingle
Counsel

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[Certificate of Service Omitted in Printing]

UNIVERSITY OF VIRGINIA AGREEMENT FOR A CONTRACTED INDEPENDENT ORGANIZATION

THIS AGREEMENT, dated as shown on page 2, paragraph 15 of this Agreement, by and between The Rector and Visitors of the University of Virginia, A Virginia public corporation (the "University"), and the organization shown on page 2, paragraph 15 (the "CIO," for "Contracted Independent Organization");

WITNESS

Various organizations comprised primarily of University of Virginia students, faculty or staff wish the University to provide the organizations with certain benefits. Without necessarily approving or disapproving the goals or activities of particular organizations, the University recognizes that the availability of a wide range of opportunities for its students, faculty and staff tends to enhance the University environment.

The University is thus willing to provide certain benefits to certain organizations (known as "CIO's"), but those benefits should not be misinterpreted as meaning that those organizations are part of or controlled by the University, that the University is responsible for the organizations' contracts or other acts or omissions, or that the University approves of the organizations' goals or activities.

The University does not use the concept of "recognizing" organizations. They are free to exist and operate either with or without any University benefits. The purpose of this Agreement is to describe the entire relationship between the University and the CIO which is a party to this Agreement, including all of the University benefits the CIO may receive, and all of the conditions for their receipt.

Accordingly, the parties agree as follows:

1. *Representations*

The CIO represents that it is either a non-stock Virginia corporation in good standing with the Virginia State Corporation Commission or an unincorporated association (see page 2, paragraph 15) existing under the laws of Virginia pursuant to the CIO's constitution, a copy of the current version of which, and all future amendments, shall be provided to the University by the CIO (unless the current constitution is already on file with Student Council and the Office of the Dean of Students). The CIO shall also provide the University with a list of all current officers, their addresses and phone numbers, and any changes made to this list.

The person executing this Agreement on the CIO's behalf represents that:

(a) the members of the CIO were provided with a copy of this Agreement as proposed and the membership thereafter authorized such person to execute the Agreement; and

(b) the CIO has consulted with its legal counsel concerning the matters in this Agreement or has had adequate opportunity to do so.

2. *Relationship between the CIO and the University*

The University is a Virginia public corporation and the CIO is not part of that corporation, but rather exists and operates independently of the University. The CIO is not an agent, servant or employee of the University, but rather is an independent contractor which manages its own affairs.

The parties understand and agree that this Agreement is the only source of any control the University may have over the CIO or its activities, except to the extent, if any, the University chooses to exercise control over activities occurring on its property, or over matters covered by the University's honor or judiciary systems. The parties un-

derstand and agree that the CIO is not required to enter into this Agreement and the only result of the CIO terminating or failing to execute this Agreement will be the loss of the benefits described in this Agreement.

3. *The CIO's Dealings with Third Parties*

The CIO shall not hold itself out as being part of, controlled by, or acting on behalf of the corporation which is the University. The CIO shall take affirmative steps in all of its recruitment, business, and other dealings with third parties (including, for example, prospective members, and businesses) to explain its relationship with the University. As one of such steps, the CIO shall include the following statement (or another similar statement approved in advance by the University) in the CIO's letters, contracts, publications and other such written materials (except intra-university and intraCIO correspondence):

> Although this organization has members who are University of Virginia students (faculty) (employees), the organization is independent of the corporation which is the University and which is not responsible for the organization's contracts, acts or omissions.

4. *Use of the University's Name and Symbols*

The University does not encourage the use of its name as part of the CIO's name, but it will allow such use provided that, to reinforce the CIO's duties under Section 3 above, the CIO takes whatever steps necessary to prevent persons and organizations with which it deals from receiving the impression that the CIO is part of, controlled by or acting on behalf of the University. The University suggests that one such step is for any use of the University's name as part of the CIO's name to be in the form of "The XYZ Club at the University of Virginia." "The University of Virginia XYZ Club" is not acceptable and cannot be used.

The CIO shall not use any marks, symbols, logos, mottoes or indicia of the University without its express prior written consent.

5. *Taxes*

The CIO shall not use the University's taxpayer identification number or the University's tax-exempt status in connection with purchases or sales by the CIO, gifts to the CIO, interest or other income of the CIO, or any other activity of the CIO.

6. *Liability, Insurance and Defense*

The CIO understands and agrees that the University, the Commonwealth of Virginia, and the employees and agents of either will not be liable for any of the CIO's contracts, torts, or other acts or omissions, or those by the CIO's directors, officers, members, staff or activity participants. The CIO understands and agrees that neither it nor its directors, officers, members, staff, or activity participants are protected by the University's or the Commonwealth of Virginia's insurance policies or self-insurance plans, and that the University and the Commonwealth will not provide any legal defense for the CIO or any such person in the event of any claim against any of them.

7. *Non-discrimination*

The CIO shall not discriminate on the basis of race, color, religion, national origin, handicap, sex, citizenship, sexual orientation, or age when determining its membership. Notwithstanding these requirements, a club sport may restrict membership based on sex where selection for such teams is based upon competitive athletic skill or the activity involved is a contact sport. Organizations may also make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex. A fraternity or sorority as defined in

Attachment B may discriminate on the basis of sex. In determining cases of the discrimination it is not sufficient to look merely to the constitution of the CIO. Its actual practices and operations are also relevant.

8. *Funding*

To be eligible to receive any funds from the student activities fee collected and administered by the University and Student Council, the CIO must comply with the provisions adopted by the Board of Visitors and Student Council. If the CIO receives any funding, it shall comply with the provisions adopted by the President, the Student Activities Committee, and Student Council pursuant to the powers delegated to them.

9. *Use of Facilities*

The University hereby makes the CIO eligible for use of the University's facilities, subject to the policies and procedures of the University and Student Council applicable to such facilities. If space in Newcomb/Peabody is assigned to the CIO, the description of such space and any special conditions applicable to its use shall be maintained by Student Council and/or the University.

10. *"Fraternity" or "Sorority"*

If the CIO is a "Fraternity" or "Sorority" as defined in Attachment B, it shall also comply with the provisions of that attachment as a part of this Agreement.

11. *Club Sports*

If the CIO is a "Club Sport" as defined in Attachment A, it shall also receive the benefits enumerated in that attachment and abide by the provisions of that attachment as a part of this Agreement.

12. *Term of Agreement*

This Agreement shall become effective as of the date written below and shall terminate on the last day of class of the academic year unless terminated earlier by the CIO, with or without cause, by written notice to the University, or by the University as a result of any violation of this Agreement by the CIO. The University Judiciary Committee may likewise recommend the termination of this Agreement for violations of the University's Standards of Conduct. Further, the University reserves the right to suspend or terminate this Agreement for cause.

13. *Waiver*

Failure of the University to enforce any of the provisions of this Agreement shall not be construed as a waiver of that provision or any later breach thereof.

14. *Notices*

Any notice under this Agreement shall be deemed given when deposited in the mail, postage prepaid, and addressed as follows:

If to the CIO: (please print or type)

WIDE AWAKE
c/o R.W. Rosenberger
P.O. Box 607
Newcomb Hall
Charlottesville, VA 22904

If to the University:

Office of the Dean of Students
P.O. Box 708, Newcomb Hall Station, U.Va.
Charlottesville, Virginia 22904

or to such other persons, at such addresses, as either party may designate for itself and so notify the other party in writing.

15. *Entire Agreement; Amendments*

This Agreement constitutes the entire agreement between the CIO and the University concerning this subject matter, and it supersedes all prior written or oral agreements concerning this subject matter. This Agreement may not be amended except by written document executed by both parties.

IN WITNESS THEREOF, the parties have executed this Agreement below:

NAME OF CIO: WIDE AWAKE

Check one: — a non-stock Virginia Corporation
X an unincorporated association

By Ronald W. Rosenberger
(Authorized Organization Officer's
(Printed Name)

/s/ R. W. Rosenberger
(Authorized Organization Officer's
Signature)

Title: Editor-in-Chief

Date: 4/24/91

THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA

By /s/ Ronald J. Stump
(University Authorized Officer)

Title: Associate Dean of Students

Date: 5-2-91
(Effective Date of Contract)

Reviewed by Student Council: /s/ Mike Marcellin
(Authorized Officer of Student Council)

PLEASE ATTACH ORGANIZATION'S CONSTITUTION AND LIST OF OFFICERS; AND RETURN *ALL* COPIES OF THIS FORM

University of Virginia CIO Agreement, Document #1, 04/18/91

White—Organization (CIO)

Canary—Student Council

Pink—Office of the Dean of Students

Goldenrod—Governing Group

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

(Title Omitted in Printing)

PLAINTIFFS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

* * * *

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Plaintiffs set forth below their statement of material facts as to which there is no genuine issue in support of their Motion for Summary Judgment.

1. Plaintiff RONALD W. ROSENBERGER, a student at the University of Virginia, is presently a resident of the Commonwealth of Virginia and was a resident of the Commonwealth of Virginia at all times relevant herein. The unincorporated organization of which he is a member, plaintiff WIDE AWAKE PRODUCTIONS, is and was at all times relevant herein a Contracted Independent Organization ("CIO") at the University of Virginia, with its principal operations in the County of Albemarle, Commonwealth of Virginia. The publication of which he is Publisher, plaintiff WIDE AWAKE MAGAZINE, is and was at all times relevant herein published and distributed by plaintiff WIDE AWAKE PRODUCTIONS at the University of Virginia in the County of Albemarle, Commonwealth of Virginia. Plaintiff ROBERT J. PRINCE is a student at the University of Virginia and the Managing Editor of WIDE AWAKE MAGAZINE. Plaintiff GREGORY W. MOURAD is a student at the University of Virginia and Editor-in-Chief of WIDE AWAKE MAGAZINE. Plaintiffs ROBERT J. PRINCE and GREGORY W. MOURAD are and/or at all times relevant herein were residents of or located in the County of Albemarle, Commonwealth of Virginia. (Complaint ¶ 5; Answer ¶ 5; Affidavit of Ronald W. Rosenberger, Editor-in-Chief of *Wide Awake* magazine ("Rosenberger Aff.") ¶¶ 1-2).[1]

2. Defendants EDWARD E. ELSON, W.L. LYONS BROWN, JR., ROBERT G. BUTCHER, JR., N. THOMAS CONNALLY, M.D., HOVEY S. DABNEY, WALLER H. HORSLEY, J. THOMAS HULVEY, M.D., EVANS B. JESSEE, PATRICIA M. KLUGE, ARNOLD H. LEON, LEIGH B. MIDDLEDITCH, JR., ELIZABETH D. MORIE, FREDDIE W. NICHOLAS, SR., S. BUFORD SCOTT, JESSE B. WILSON, III, THOMAS E. WORRELL, JR., ADAM S. ARTHUR, and ALEXANDER G. GILLIAM, JR. are sued in their capacities as members of defendant RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA ("Board of Visitors"). The Board of Visitors of the University of Virginia is a corporation established by the General Assembly of the Commonwealth of Virginia. The Board of Visitors is subject to the control of the General Assembly of the Commonwealth of Virginia. The members of the Board of Visitors are appointed by the Governor of Virginia. The Board of Visitors, in accordance with the Constitution of the Commonwealth of Virginia and with law, formulates policy, makes regulations and exercises such control over the University of Virginia as it deems expedient. The Board of Visitors may lawfully delegate this power. Under authority of the General Assembly, the Board of Visitors has exclusive jurisdiction over the internal organization, government and management of the University of Virginia. The University of Virginia is an institution of higher education that receives public funds from the Commonwealth of Virginia. The monies

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[1] Unless otherwise specified, plaintiffs are hereafter referred to collectively as "Wide Awake."

in the Students Activities Fund ("SAF") constitute public funds. (Complaint ¶ 6; Answer ¶ 6).

3. Defendant RONALD J. STUMP is and was at all times relevant herein Associate Dean of Students at the University of Virginia and Chairperson of the Student Activities Committee of the University of Virginia. Defendant RONALD J. STUMP is and/or was at all times relevant herein the Associate Dean of Students at the University of Virginia and Chairperson of the Student Activities Committee of the University of Virginia. The Student Activities Committee is a University of Virginia committee composed of faculty members, administrators and students. The Student Activities Committee is charged by the Vice President for Student Affairs of the University of Virginia to provide oversight of the student activities fee fund and its allocation by the Student Council. (Complaint ¶ 7; Answer ¶ 7).

4. As provided for in the Code of Virginia Title 23, Chapter 9, Article 2, Sections 23-69 to 23-80, the Board of Visitors is charged with the authority to manage the affairs of the University of Virginia. One of its responsibilities is the general oversight of student activities. To this end, the Board of Visitors has adopted policies with regard to the operation and funding of student organizations. Such policies include the requirement that the Board of Visitors (or its delegate) establish guidelines for the funding of such organizations from Student Activities Fund ("SAF") monies. (Complaint ¶ 8; Answer ¶ 8).

5. The Student Council of the University of Virginia is a Special Status Student Organization that conducts its affairs pursuant to a delegation of authority from the Board of Visitors. Currently and at all times relevant herein, the Board of Visitors sets forth and has set forth the guidelines and procedures for the distribution of SAF funds to Contracted Independent Organizations. Currently and at all times relevant herein, the Student Council implements and has implemented these guidelines and procedures. (Complaint ¶ 9; Answer ¶ 9).

6. The Student Council has a number of subcommittees, including an Appropriations Committee. The Appropriations Committee is chaired by the Student Council's Vice-President for Student Organizations. (Complaint ¶ 10; Answer ¶ 10).

7. During the period relevant to this lawsuit, the Student Council, upon recommendation of its Appropriations Committee, has regularly funded CIOs from SAF funds. This practice dates back at least to 1973. (Complaint ¶ 11; Answer ¶ 11).

8. The University of Virginia has charged at all times relevant herein and currently charges each full-time student a compulsory student activity fee of $14.00 per semester. There is no procedural or other mechanism by which a student may decline to pay the fee. These compulsory student fees are deposited into the University of Virginia Student Activities Fund. (Complaint ¶ 12; Answer ¶ 12).

9. There are more than 300 CIOs at the University of Virginia. Approximately 100 CIOs were funded with SAF monies during the 1990-1991 academic year under criteria and guidelines established by the Board of Visitors. Acting pursuant to its authority from the Board of Visitors, the Student Council allocated more than $200,000.00 to CIOs for that time period. (Complaint ¶ 13; Answer ¶ 13).

10. The Board of Visitors guidelines that are applied by the Student Council prohibit the funding of, *inter alia*, "religious activities" with SAF monies. (Complaint ¶ 14; Answer ¶ 14).

11. The student organization Black Voices was funded with SAF monies for the 1990-91 academic year. During the SAF appropriations process, the representative of

Black Voices stated that the organization engaged in religious activity. Subsequently during the SAF appropriations process, the representative of Black Voices stated that the organization did not engage in religious activity. Prior to the SAF appropriations process for the 1991-92 academic year, defendant RONALD J. STUMP informed the Black Voices organization that the organization could either forego engaging in "religious activity" or forego receipt of SAF benefits. Black Voices subsequently resolved not to seek SAF benefits for the 1991-92 academic year. (Complaint ¶ 15; Answer ¶ 15).

12. The Muslim Students Association, the Jewish Law Students Association, and the C.S. Lewis Society have received in the past and continue to receive SAF benefits. (Complaint ¶ 15; Answer ¶ 15).

13. Student publications that have received SAF benefits in the past have contained opinions or articles that express both religious and secular viewpoints. (Complaint ¶ 16; Answer ¶ 16).

14. *Wide Awake* magazine contains both religious and secular subject matter. (Rosenberger Aff. ¶ 3).

15. *Wide Awake* magazine generally expresses a religious perspective. (Answer ¶ 16; Rosenberger Aff. ¶ 4).

16. SAF-funded student organizations express a variety of ideological viewpoints, including but not limited to viewpoints which are inconsistent with or antagonistic to various religious beliefs. (Complaint ¶ 17; Answer ¶ 17).

17. In January of 1991, Plaintiff RONALD W. ROSENBERGER, on behalf of plaintiffs WIDE AWAKE PRODUCTIONS and WIDE AWAKE MAGAZINE, submitted an application for Student Activities Fund benefits to the Student Council Appropriations Committee. This application for funding was in the amount of $5,862.00

to support the publication of *Wide Awake* magazine. (Complaint ¶ 18; Answer ¶ 18).

18. On or about February 26, 1991 the Student Council Appropriations Committee turned down plaintiffs' request for Student Activities Fund funding. A February 26, 1991 letter from the Student Council's Vice President for Student Organizations to plaintiff RONALD W. ROSENBERGER stated that the reason for the denial of funding was that the Student Council Appropriations Committee had "determined your organization's request could not be funded as it is a religious activity. The determination was made after reviewing your first issue of *Wide Awake*." (Complaint ¶ 19; Answer ¶ 19).

19. No reason other than the alleged status of Wide Awake as a "religious activity" was offered as a basis for the denial of funding. (Complaint ¶ 20; Complaint ¶ 20 [sic]; Rosenberger Aff. ¶ 5).

20. The application of Wide Awake for Student Activities Fund benefits conformed with all applicable, content-neutral Student Activities Fund requirements. In particular, at least 51% of Wide Awake's members are students; the organization's officers are all full-time, fee-paying students; the group keeps an updated copy of its constitution on file at the University of Virginia Student Council offices; and Wide Awake has signed all anti-discrimination disclaimers that are required. (Complaint ¶ 21; Answer ¶ 21; Rosenberger Aff. ¶ 8).

21. Pursuant to procedures established by the Board of Visitors and implemented by the Student Council, Wide Awake appealed the Student Council Appropriations Committee's denial of funding to the full Student Council on or about March 3, 1991. (Complaint ¶ 22; Answer ¶ 22).

22. On or about March 19, 1991, the full Student Council denied Wide Awake's appeal and affirmed the

Student Council Appropriations Committee's denial of funding. (Complaint ¶ 23; Answer ¶ 23).

23. The Student Council stated no reasons for the denial of benefits to Wide Awake other than its alleged status as a "religious activity." (Complaint ¶ 23; Answer ¶ 23; Rosenberger Aff. ¶ 5).

24. Pursuant to Board of Visitors and Student Council procedures, Wide Awake appealed the decision of the Student Council to the Student Activities Committee. (Complaint ¶ 24; Answer ¶ 24).

25. On or about April 8, 1991 the Student Activities Committee held a public hearing on the Wide Awake appeal. (Complaint ¶ 25; Answer ¶ 25).

26. On or about April 15, 1991 the Student Activities Committee voted to affirm the denial of funding to Wide Awake. (Complaint ¶ 26; Answer ¶ 26).

27. The Student Activities Committee stated no reasons for the denial of benefits to Wide Awake other than its alleged status as a "religious activity." (Complaint ¶ 26; Answer ¶ 26; Rosenberger Aff. ¶ 5).

28. Wide Awake has exhausted all internal and administrative procedures provided by the University of Virginia. (Complaint ¶ 27; Answer ¶ 27).

29. Because plaintiffs have been denied SAF benefits, they are ineligible to apply for access to certain space and facilities at the University of Virginia, including but not limited to computers, printers and other equipment located in Peabody Hall at the University of Virginia. (Complaint ¶ 29; Answer ¶ 29; Rosenberger Aff. ¶ 6).

30. The facilities in Peabody Hall containing computers, printers and other equipment are available for use and have been available for use at all times relevant herein by SAF-funded Contracted Independent Organizations that produce publications and pay a nominal annual

fee for the use of such facilities. (Complaint ¶ 30; Answer ¶ 30; Rosenberger Aff. ¶ 7).

Dated: Charlottesville, Virginia

November 11, 1991

Respectfully submitted,

/s/ James R. Murray
JAMES R. MURRAY
JACKSON R. SHARMAN III
COVINGTON & BURLING
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

/s/ George H. Dygert
GEORGE H. DYGERT
(Bar No. 16378)
GEORGE H. DYGERT & ASSOCIATES
900 E. High Street
Charlottesville, VA 22701
(804) 979-5515
Attorneys for Plaintiffs

Of Counsel

MICHAEL P. MCDONALD
CENTER FOR INDIVIDUAL RIGHTS
1300 19th Street, N.W.
Suite 260
Washington, D.C. 20036
(202) 833-8400

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

(Title Omitted in Printing)

AFFIDAVIT OF RONALD W. ROSENBERGER

I, Ronald W. Rosenberger, state as follows:

1. I, Ronald W. Rosenberger, am a student at the University of Virginia and a resident of the Commonwealth of Virginia, and I was a resident of the Commonwealth of Virginia at all times relevant herein.

2. I am the Publisher of *Wide Awake* magazine, a non-profit journal that is written, edited, published and distributed at the University of Virginia by students at the University of Virginia (hereafter collectively "Wide Awake," unless otherwise noted). Gregory W. Mourad is a student at the University of Virginia and Editor-in-Chief of *Wide Awake* magazine. Robert J. Prince is a student at the University of Virginia and Managing Editor of *Wide Awake* magazine.

3. *Wide Awake* magazine contains both religious and secular subject matters.

4. *Wide Awake* magazine generally expresses a religious perspective.

5. At no time in the 1990-91 Student Activities Fund ("SAF") appropriations process did the University of Virginia Student Council Appropriations Committee ("Appropriations Committee"); the University of Virginia Student Council ("Student Council"); the University of Virginia Student Activities Committee ("Student Activities Committee"); or the Rector and Visitors of the University of Virginia ("Board of Visitors" or "BOV"), or any of their officers, members or agents inform Wide Awake that Wide Awake was denied SAF benefits for a reason other than the allegation that publication of *Wide Awake* magazine constitutes a prohibited "religious activity" under the relevant Board of Visitors Guidelines.

6. Because Wide Awake has been denied SAF benefits, Wide Awake is ineligible to apply for access to certain space and facilities at the University of Virginia, including but not limited to computers, printers and other equipment located in Peabody Hall at the University of Virginia.

7. The facilities in Peabody Hall containing computers, printers and other equipment are available for use and have been available for use at all times relevant herein by SAF-funded contracted independent organizations ("CIOs") that produce publications and pay a nominal annual fee for the use of such facilities.

8. Wide Awake is composed of at least 51% students; Wide Awake's officers are all full-time, fee-paying students; Wide Awake keeps an updated copy of its constitution on file at the student council offices, and Wide Awake has signed antidiscrimination disclaimers. Throughout the appropriations process, none of the entities or individuals listed in Paragraph 5 above informed Wide Awake that Wide Awake did not apply with all applicable, content-neutral requirements for the receipt of SAF benefits.

9. Because Wide Awake was denied and continues to be denied SAF benefits, the writers, editors and publishers of Wide Awake Magazine spend time raising funds for the publication that they would otherwise spend at their writing, editing and publishing tasks.

10. At no point in the SAF appropriations process did the Appropriations Committee, the Student Council, the

Student Activities Committee or the Board of Visitors maintain that the religious beliefs of the writers, editors and publishers of Wide Awake Magazine were not or are not sincerely held.

11. Throughout the appropriations process, Wide Awake received no communications from the Board of Visitors, nor was Wide Awake at any point informed that the Board of Visitors had considered or was considering the constitutional issues involved in Wide Awake's application for SAF benefits.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 8th day of November, 1991 in Charlottesville, Virginia.

/s/ Ronald W. Rosenberger
RONALD W. ROSENBERGER

Given under my hand and seal this
8th day of November, 1991.

/s/ Kelly A. Hobbs
Notary Public

My Commission expires: 2/28/95

EXHIBIT 1

LETTER FROM THE EDITOR

Welcome!

Dear Readers, Welcome to the first issue of *Wide Awake*. *Wide Awake* offers a Christian perspective on both personal and community issues, especially those relevant to college students at the University of Virginia. Last Spring we realized that none of the fifteen student-run publications at the University provided a forum for Christian expression, and we decided to fill that void.

Our mission is twofold: to challenge Christians to live, in word and deed, according to the faith they proclaim and to encourage students to consider what a personal relationship with Jesus Christ means. College is a time to pursue knowledge; an understanding of one's religious beliefs should not be neglected, but should rather constitute the heart of that quest.

Christianity is not a spectator sport—it is a vital relationship with our Creator, the One who knows us intimately and loves us infinitely. Jesus calls us to be active players in life. In Matthew 5:13-14, Jesus says "You are the salt of the earth. . . . You are the light of the world. A city on a hill cannot be hidden." Christians are called to lead exemplary lives by walking in Jesus's footsteps.

In this issue, we will explore how Christian principles for living can have an impact on our personal lives, our attitudes towards others, and our relationship to people in need. Economics professor Ken Elzinga shares how Christ has influenced his role as a teacher. In our cover story, we examine how the Bible offers tenable solutions

to racism, a disease that has plagued society for centuries. Finally, we look at a Christian home for unwed mothers as a concrete example of Christian love in action.

We hope that the articles in this issue will inspire you to consider how the Bible applies to your own life today. We would like to extend a special thanks to the Center for Christian Study for the use of their office and the encouragement they gave us. We would also like to thank those who made this magazine possible through their prayers and financial support.

Love in Christ,

/s/ Ronald W. Rosenberger
RONALD W. ROSENBERGER
Editor-in-Chief

Interested in graphics, writing, or editing?

Spread the Good News!
Join
WIDE AWAKE!

For more information call Ron at 979-5844.

WIDE AWAKE

A Christian Perspective at the University of Virginia

The hour has come for you to awake from your slumber, because our salvation is nearer now than when we first believed.

—Romans 13:11

Editor-in-Chief
Ronald W. Rosenberger

Executive Editor
Greg Mourad

Managing Editor
Rob Prince

Contributors
Stephanie Ace
Karen Barnes
Jeff Buterbaugh
Michelle Carpick
Jason Craddock
Crystal M. Dobson

Rod Early
Alice Ferguson
Traci Gallagher
Lisa Hampson
Fred Hopkins
Robin Kim
Jenny Lea Foley
Kenneth Liu
Vivian Macpherson
Kimberly Manno
Marcus Meachum
Christy Olson
Nikki Poitevent
Mike Snyder
Heather Winter

Special thanks to the Center for Christian Study.

Send correspondence to:

P.O. Box 607
Newcomb Hall Station
Charlottesville, VA 22904

The opinions expressed in signed articles are the opinions of the authors and do not necessarily represent those of Wide Awake Productions.

EXHIBIT 2

APPROPRIATION'S COMMITTEE RECOMMENDATIONS SPRING 1991 PROCESS

Category 1 Special Status Student Organizations Charged By The Board Of Visitors

	Request	Allocation	
Student Council			Decided 4/91
WTJU	25925	17104	
Total	25925	17104	

Category 2 Co-Curricular Organizations Which Are Not Administered By University Departments Or Units

	Request	Allocation	
AIESEC	2954	944	
Classics Graduate Assoc.	552	252	
Darden Entrepreneurs Club	748	90	
Darden Health Care Forum	868	254	
Darden Marketing Club	2384	1088	
Environmental Sciences Org.	130	116	
Graduate Biosciences Society	4066	556	
Grad. Society Of Black Engineers	914	448	
International Business Society	1374	0	Self-Sufficient
Int. Relations Organization	2852	1854	
Nat. Society Of Black Engineers	1028	0	Self-Sufficient
Operations Club	398	0	Self-Sufficient
Philosophy Club	614	144	
Pre-Physical Therapy Club	430	330	
Pre-Veterinary Society	1998	1202	
Reserve Officers Assoc. Of Darden	748	326	
Rhetoric & Com. Studies Society	696	252	
Soc. Of Hispanic Prof. Engineers	826	294	
Society Of Arch. History	1728	878	
Student Alliance Of Landscape Arch.	1099	280	
Student Nurses Assoc. At UVA	2476	438	
Virginia AIAS	1234	430	
Washington Lit. Society	1348	364	
Total	31465	10540	

Category 3 Club Sports

	Request	Allocation	
Cavalier Road Runners	1512	1250	
Club Sport Council	1314	1314	
Fencing Club (Virginia)	3404	2700	
Floor Hockey Club (Virginia)	776	556	
LaCrosse Club (Virginia)	1146	1146	
Mountain Biking Club	670	578	
Okinawan Kempo Karate Club	3300	1912	
Polo Club (Virginia)	9788	8990	
Raquetball Club	610	360	
Riding Team (Virginia)	5434	4534	
Rifle & Pistol Club (Virginia)	6608	6002	
Rowing Team	18458	10134	
Rugby, Men's	14388	9568	
Rugby, Women's	4102	3936	
Shotokan Karate	522	414	
Ultimate Club	5044	3646	
Virginia Ski Team	9692	5632	
Virginia Soccer Club	2034	2034	
Volleyball	2970	2710	
Water Polo	2140	1602	
Women's Soccer Club	1500	1412	
Total	95412	70430	

Category 4 Student News, Information, Opinion, Entertainment, Or Academic Communications Media Groups

	Request	Allocation	
Audio Visuals Unlimited	9570	6512	
Cavalier Communications/Wire			Deferred
Coup	714	714	
Declaration, The			Deferred
Dialogue Magazine	6818	5426	
Journal Of Law & Politics	3392	3392	
Loki Science Magazine			Defunded
Oculus	4748	4748	
Seasons	0	0	Self-Sufficient
Thoughtlines	2580	2580	
University Journal	9028	8538	
Virginia Advocate	2553	2470	
Virginia Env. Law Journal	2656	2330	
Virginia Journal Of Int. Law	8726	6454	
Virginia Literary Review	3353	3346	
Virginia Studio Record	1506	620	
Virginia Tax Review	1482	1282	
Wide Awake Productions			Defunded
Yellow Journal	3386	3050	
Total	60512	51462	

Category 5 Cultural Organizations

	Request	Allocation	
Afri-Carib Association	1246	712	
Asian Student Union	1372	866	
Black Student Alliance	0	0	Self-Sufficient
Chinese Student Association	892	880	
Hellenic Association/Society	50	50	
Indian Student Association	1098	822	
Japanese Club	430	412	
Muslim Students' Association	444	246	
Org. Of Young Filipino Americans	948	756	
Pakistan Student League	460	372	
Society For The Promotion Of Indian Class. Music	2372	2044	
Vietnamese Student Assoc.	468	280	
Total	9780	7390	

Category 6 Fine Arts Organizations

	Request	Allocation	
Camerata Rotunda			Deferred
Musique	634	24	
Pep Band	9198	6540	
Shalom Theatre Co.	0	0	Self-Sufficient
Virginia Glee Club	10980	8440	
Virginia Sil'Hooettes	1224	486	
Total	22036	15490	

Category 7 Madison House:

	Request	Allocation
Madison House	33188	33188
Total	33188	33188

Category 8 Hobby Organizations:

	Request	Allocation	
Amateur Radio Club	2162	0	Self-Sufficient
C.S. Lewis Society	280	220	
Dance Club	324	312	
Karate & Self Defense	1012	682	
Outing Club At UVA	2080	840	
Virginia Ski Club	173	0	Self-Sufficient
Total	6031	2054	

Category 9 Non-Political Groups Whose Predominate Purpose Is To Present Speakers On Topics Of Probable General Interest To The University

	Request	Allocation
Alternatives: Perspectives In Medicine	1676	1050
Black Law Students Assoc.	5612	3564
Environmental Law Forum	852	764
Darden Business Club	2162	968
Federalist Society	3204	1444
Moore, J.B., Society Of Int. Law	2360	1016
Shotokan Karate Club	522	414
Speakeasy	336	266
Sports & Entertainment Law Forum	852	20
Student Legal Forum	7636	5548
Virginia Law Women	1122	843
Total	26334	15897

Category 10 The Student Legal Services

	Request	Allocation
Student Legal Services	66000	65346
Total	66000	65346

Category 11 Service Organizations

	Request	Allocation	
Action For Better Living	1614	1496	
Amnesty International At UVA	0	0	Self-Sufficient
Blue Ridge Mtn. Rescue Group	7574	6916	
Cavalier Civitan Club	788	472	
Circle K	866	0	Self-Sufficient
Council Of Black Student Leaders	3206	2420	
Darden Environmental Alliance	758	660	
Gay & Lesbian Law Student Assoc.	476	460	
Legal Assistance Society	3176	2724	
Lesbian & Gay Student Union	2084	1862	
The Monroe Society			Deferred
Post Conviction Assistance Project	7060	5740	
Students Against Hunger	1838	846	
Students For Animal Rights	522	200	
Student Alliance For Va. Environment			Deferred
Students For Rape Awareness	698	558	
Student Watch	1318	968	
Teach For America Of UVA	508	360	
Total	32486	25682	
	Total	314583	

EXHIBIT 5

[Univ. Logo]

STUDENT COUNCIL
UNIVERSITY OF VIRGINIA
P O Box 707 Newcomb Hall Station
Charlottesville, Virginia 22904

108 Peabody Hall
(804) 921-3151
(804) 982-HEAR

February 26, 1991

Mr. Ronald W. Rosenberger
Chief Executive Officer
Wide Awake Productions
1904 Jefferson Park Avenue # 22
Charlottesville, VA 22903

Dear Ron:

This letter is intended to formally notify you of the Appropriations Committee's decision to not fund Wide Awake Productions for 1991-92.

The Student Council Appropriations Committee is responsible for allocating funds to student organizations within the Board of Visitors Guidelines. These Board of Visitors Guidelines designate specific student organizations and activities which may or may not be funded. The Board of Visitors have determined that such student groups as fraternities, sororities, honor societies and religious organizations and such activities as social entertainment, political activities and religious activities may not be funded by the Student Activity Fee. As you know, other student organizations and activities such as fine arts, sports clubs, hobby organizations may be funded by the fee. These distinctions have been made in order to fund

those activities felt to be most related to the educational purpose of the University because of the limited amount of money available in the fund.

In reviewing the request by Wide Awake Productions, the Appropriations Committee determined your organization's request could not be funded as it is a religious activity. This determination was made after reviewing your first issue of *Wide Awake*. In particular, the committee noted in your Editor's Letter that the publication was "a forum for Christian expression" and a means "to challenge Christians (in how) to live . . . ." The committee's decision was supported by the opinion of the University's General Counsel who also reviewed the publication.

Please be aware that this decision simply denies Student Activity Fee funding for your publication. Wide Awake Productions may still print and distribute issues on Grounds. For this reason, we wish you every success with your efforts. As a reminder, the Appropriations Committee's decision may be appealed to Student Council if you submit a written appeal by 5:00 p.m., Sunday March 3 at the Student Council office. You have until 5:00 p.m., Friday, March 1, to submit an appeal for a hearing at the March 5 Student Council meeting.

If you have any questions about this matter, please feel free to contact me.

Sincerely,

/s/ Cynthia J. Wilbricht
CYNTHIA J. WILBRICHT
Vice President
for Student Organizations

CJW:bc

c: Ronald J. Stump
Student Council Appropriations Committee

EXHIBIT 7

[Univ. Logo]

UNIVERSITY OF VIRGINIA
Office of the Dean of Students

Peabody Hall
Tel. 804-924-7133

April 16, 1991

Mr. Ronald W. Rosenberger
Chief Executive Officer
Wide Awake Productions
P.O. Box 607
Newcomb Hall Station

Dear Ron:

This letter is intended to formally notify you of the Student Activities Committee's decision to deny the appeal by Wide Awake Productions.

After reviewing your organization's constitution, copies of the magazine's first two editions, and the arguments presented at last week's appeal by Wide Awake Productions and by Student Council, the committee determined that the Wide Awake magazine could not be funded as it is a religious activity. In effect, the Student Activities Committee fully supports the decision and reasoning provided to you in the February 26 letter from Ms. Cyndi Wilbricht. As noted in Ms. Wilbricht's letter, Wide Awake Productions may still print and distribute copies of the magazine and as a CIO has full and equal access to other University facilities and services.

On behalf of the Student Activities Committee, I extend our best wishes for a successful publication. If you have any questions regarding the committee's decision, please feel free to contact me.

Sincerely,

/s/ Ronald J. Stump
RONALD J. STUMP
Associate Dean of Students

RJS:bc

c: Student Activities Committee
James J. Mingle

EXHIBIT 11

1988-89 STUDENT ACTIVITY FUND ALLOCATIONS

Group	Request	Alloc.	3% Cut	Final Allocation	
Club Sports Council	3,046	2,934	88	2,846	1,423
Council of Black Student Leaders	3,741	1,804	54	1,750	875
					ERR
TOTAL	$6,787	$4,738	$142	4,596	2,298
AISEC	2,807	Deferred	Deferred	Deferred	ERR
Anthropology Assoc.	621	602	18	584	292
Asian Studies Committee	177	168	5	164	82
Black Architecture Student Assoc.	0	0	0	0	0
Black Engineering Society	902	726	22	704	352
Daniel Hale Williams Black Pre-m	170	0	0	0	0
Doctoral Nursing Students Org.	778	634	19	616	308
Entrpreneurs [sic] Club	792	0	0	0	0
Environmental Sciences Org.	542	426	13	414	207
Gandhi Peace Center	1,047	240	7	232	116
Graduate History Students Assoc.	404	0	0	0	0
Graduate Society of Black Engine	3,731	Defunded	Defunded	Defunded	ERR
Grad. Student Assoc., Govmt. Dep	3,426	0	0	0	0
McIntire Marketing Assoc.	2,875	1,838	55	1,784	892
NSSLHA	473	274	8	266	133
Phi Beta Lambda	578	42	1	42	21
Philosophy Club	981	526	16	512	256
Pre-Veterinary Society	738	366	11	356	178
Rhetoric and Communications Society	485	446	13	434	217

Group		Request	Alloc.	3% Cut	Final Allocation	
Society of Women Engineers		547	524	16	510	255
Student Medical Society		1,711	1,512	45	1,468	734
Student Planners Assoc.		3,124	2,264	68	2,198	1,099
T & D Society		1,961	76	2	74	37
						ERR
	TOTAL	$26,906	$10,664	$320	$10,358	5,179
Archery Club		1,695	746	22	724	362
Cavalier Road Runner Club		1,322	734	22	712	356
Croquet Club		2,170	986	30	958	479
Cycling Club		836	636	19	618	309
Dance Club		969	824	25	800	400
Fencing Club		4,659	2,876	86	2,790	1,395
Floor Hockey Club		1,012	332	10	324	162
Gymnastics Club		1,852	1,306	39	1,268	634
Judo Club		1,530	770	23	748	374
Kendo and Iai Club		3,938	1,710	51	1,660	830
Myo Sim Karate Club		1,726	70	2	68	34
Okinawan Kempo Karate		13,065	2,486	75	2,412	1,206
Polo Club		8,368	3,930	118	3,814	1,907
Riding Team		7,684	2,620	79	2,542	1,271
Rifle and Pistol Club		5,413	2,424	73	2,352	1,176
Rowing Assoc.		34,587	8,150	245	7,906	3,953
Rugby Football Club, Men's		10,142	4,190	126	4,066	2,033
Rugby Football Club, Women's		4,762	4,322	130	4,194	2,097
Sailing Association		2,465	1,584	48	1,538	769

Shotokan Karate Club		1,694	654	20	636	318
Soccer Club		2,214	1,802	54	1,748	874
Uechi Ryu Karate Club		1,792	660	20	642	321
Ultimate Frisbee Club		4,135	3,060	92	2,870	1,435
Volleyball Club		1,462	1,042	31	1,012	506
Water Polo Club		2,524	1,432	43	1,390	695
						ERR
	TOTAL	$122,013	$49,346	$1,480	$47,792	23,896
Declaration		15,389	13,138	394	12,744	6,372
Dialogue		14,000	4,490	135	4,356	2,178
Forum, The		1,275	Defunded	Defunded	Defunded	ERR
Four A.M. Writer's Guild		1,068	Defunded	Defunded	Defunded	ERR
Iris		14,078	Defunded	Defunded	Defunded	ERR
Journal of Law and Politics		8,120	8,070	242	7,828	3,914
Loki Science Magazine		4,989	2,164	65	2,100	1,050
Modulus		5,386	5,312	159	5,154	2,577
Oculus		5,315	3,400	102	3,298	1,649
Seasons		6,482	5,382	161	5,222	2,611
Thoughtlines		7,444	3,750	113	3,628	1,814
University Journal		40,884	33,918	1,018	32,902	16,451
Va. Journal of International Law		11,803	10,394	312	10,084	5,042
Va. Journal of Nat. Resources Law		0	0	0	0	0
Virginia Advocate		10,445	3,800	114	3,686	1,843
Virginia Literary Review		2,670	1,062	32	1,032	516
Virginia Studio Record		5,243	4,902	147	4,756	2,378
Virginia Tax Review Assoc.		8,639	3,784	114	3,672	1,836
Yellow Journal		6,429	3,998	120	3,880	1,940
						ERR
	TOTAL	$169,657	$107,564	$3,227	$104,342	52,171

Group		Request	Alloc.	3% Cut	Final Allocation	
Audio Visuals Unlimited		36,372	5,170	155	5,016	2,508
TJU-FM		11,475	1,062	32	1,032	516
						ERR
	TOTAL	$47,847	$6,232	$187	$6,048	3,024
Camerata Rotunda		3,855	1,982	59	1,924	962
Chinese Student Assoc.		896	754	23	732	366
Committee on Asian Cultures		1,442	776	23	754	377
Glee Club		213	0	0	0	0
Indian Student Assoc.		1,817	644	19	626	313
Interculture		540	162	5	158	79
Iranian Students Assoc.		1,256	716	21	696	348
Japanese Club		645	606	18	588	294
Jazz Ensemble		2,042	0	0	0	0
Musique		1,385	94	3	92	46
Pep Band		10,912	4,526	136	4,392	2,196
Scandinavian Interest Club		396	206	6	200	100
Senior Cassical [sic] League		1,370	938	28	910	455
Spanish House		582	Defunded	Defunded	Defunded	ERR
Symphonic Band		3,293	804	24	780	390
University Singers		716	418	13	406	203
Vietnamese Students Assoc.		640	198	6	194	97
Virginia Hullabahoos		1,663	762	23	740	370
Women's Chorus		6,430	3,464	104	3,362	1,681
						ERR
	TOTAL	$40,091	$17,050	$512	$16,554	8,277

Madison House		30,506	29,020	871	28,150	14,075
						ERR
	TOTAL	$30,506	$29,020	$871	$28,150	14,075
Post Conviction Assistance Project		3,931	1,902	57	1,846	923
Virginia Health Law Forum		1,595	1,156	35	1,122	561
						ERR
	TOTAL	$5,525	$3,058	$92	$2,968	1,484
Bridge Club		1,494	296	9	288	144
Cavalier Aviation Club		11,968	4,602	138	4,464	2,232
Charlottesville Grotto		206	208	6	202	101
Chess Club		3,059	620	19	602	301
Outing Club		711	398	12	388	194
Strategy Gaming Club		102	0	0	0	0
Yoga Club		675	0	0	0	0
						ERR
	TOTAL	$18,215	$6,124	$184	$5,944	2,972
Beyond War at UVA		255	Defunded	Defunded	Defunded	ERR
Federalist Society		4,601	3,826	115	3,712	1,856
J.B. Moore Soc. of International Law		872	782	23	760	380
Society of Architectural Historians		300	170	5	166	83
Student Alliance of Landscape Ar.		467	320	10	312	156
Student Legal Forum		10,489	6,854	206	6,650	3,325
Students for Accountability		530	Defunded	Defunded	Defunded	ERR
Students for Rape Awareness		854	32	1	32	16
Washington Literary Society		4,323	712	21	692	346
						ERR
	TOTAL	$22,690	$12,696	$381	$12,324	6,162

Group		Request	Alloc.	3% Cut	Final Allocation	
American Medical Student Assoc.		1,351	784	24	762	381
Blue Ridge Mountain Rescue Group		9,027	7,162	215	6,948	3,474
Business Forum		4,011	1,016	30	986	493
Gay and Lesbian Law Students Assoc.		383	272	8	264	132
Information Systems Group		1,673	0	0	0	0
Law Students for Public Service		1,264	904	27	878	439
Legal Assistance Society		6,544	6,094	183	5,912	2,956
Lesbian and Gay Student Union		2,528	1,644	49	1,596	798
Monroe Society		3,392	930	28	904	452
Student National Medical Assoc.		1,457	1,458	44	1,416	708
Student Watch		2,291	1,108	33	1,076	538
Theta Tau Engineering Society		954	Defunded	Defunded	Defunded	ERR ERR
	TOTAL	$34,875	$21,372	$641	$20,742	10,371
Black Law Students Assoc.		4,701	2,548	76	2,472	1,236
Black Student Alliance		4,663	880	26	854	427
Student Self-Advocacy Group		3,314	1,208	36	1,172	586 ERR
	TOTAL	$12,678	$4,636	$139	$4,498	2,249
	TOTALS	537,792	272,500	8,175	264,316	132,158 ERR

[1989-90 Student Activity Fee Allocation Release
Omitted in printing Due to Illegibility]

1990-91 STUDENT ACTIVITY FEE ALLOCATIONS RELEASE

	Total Allocation	First Semester Allocation
Category 1:		
Club Sports Council	1168	584
TOTAL	1168	584
Category 2:		
AIAS	1048	524
AISEC	638	319
Daniel Hale Williams Black Pre-Med	762	381
Die Deutsche Gesselschaft	312	156
Graduate Society Black Engineers	320	160
International Business Society	616	308
International Relations Organization	1150	575
National Society of Black Engineers	738	369
Philosophy Club	528	264
Pre-Vet Society	1136	568
Senior Classical League	422	211
Society of Architectural Historians	320	160
Student Alliance of Landscape Architectures	320	160
Undergraduate Economic Club	258	129
Washington Literary & Debating Club	940	470
TOTAL	9508	4754
Category 3:		
Archery Club	740	370
Cavalier Road Runner Club	1298	649
Dance Club	436	218
Golf Club	754	377
Judo Club	1422	711
Mountain Biking Club	622	311
Okinawan Kempo Karate Club	1502	751
Racketball Club	104	52
Sailing Association	870	435
Shotokan Karate	226	113
Uechi Ryu Karate Club	740	370
Va. Alpine Ski Assoc.	5444	2722
Va. Cycling Club	1386	693
Va. Fencing Club	2962	1481
Va. Floor Hockey Club	542	271
Va. Riding Team	2680	1340
Va. Rifle and Pistol Team	3284	1642
Va. Rowing Association	7862	3931
Va. Soccer Club	1778	889

	Total Allocation	First Semester Allocation
Va. Ultimate Frisbee Club	3150	1575
Va. Volleyball Club	2158	1079
Va. Women's Rugby Football	3970	1985
Water Polo Club	1596	798
Women's Soccer Club	1520	760
TOTAL	47046	23523
Category 4:		
COUP	12324	6162
Declaration	9100	4550
Journal of Law and Politics	5570	2785
Loki Science Magazine	1952	976
Oculus	4788	2394
Seasons	3598	1799
Thoughtlines	4188	2094
University Journal	8944	4472
Va. Environmental Law Journal	6732	3366
Va. Journal of International Law	5998	2999
Va. Tax Review Assoc.	7074	3537
Virginia Advocate	2852	1426
TOTAL	78120	36560
Category 5:		
Audio Visuals Unlimited	1746	873
TOTAL	1746	873
Category 6:		
Asian Student Union	1912	956
Assoc. for Arab-American Understanding	376	188
Assoc. of Afri-Carib Cultures	806	403
Camerata Rotunda	2004	1002
Chinese Student Association	1018	509
C. S. Lewis Society	222	111
Disco Beat, Yellow Journal	3016	1508
Glee Club	8296	4148
Indian Student Association	368	184
Japanese Club	540	270
Musique	666	333
Organization of Young Filipino-American	800	400
Va. Literary Review	3044	1522
Va. Pep Band	4936	2468
Va. Silhoouettes	1090	545
Va. Swing Orchestra	1614	807
Vietnamese Students Assoc.	362	181
TOTAL	31070	15535

	Total Allocation	First Semester Allocation
Category 7:		
Madison House	34830	17415
TOTAL	34830	17415
Category 8:		
Post-Conviction Project	3620	1810
Va. Health Law Forum	408	204
TOTAL	4028	2014
Category 9:		
Charlottesville Grotto	208	104
Outing Club	400	200
Va. Ski Club	76	38
TOTAL	684	342
Category 10:		
Alternatives: Perspectives	546	273
Beyond War	114	57
Darden Business Forum	668	334
Environmental Forum & Research Group	298	149
Federal Society	3842	1921
Gandhi Peace Center	668	334
J.B. Moore Society of International Law	490	245
Law Students for Public Service	228	114
Marketing Club of Darden	1600	800
Sports & Entertainment Law Forum	502	251
Student Legal Forum	3694	1847
Students for Animals Rights	360	180
TOTAL	13010	6505
Category 12:		
Blue Ridge Mountain Rescue	8052	4026
Circle K	198	99
Legal Assistance Society	2256	1128
Lesbian and Gay Student Union	1632	816
Monroe Society	786	393
SADD	266	133
Student Alliance for Virginia's Environment	140	70
Students for Rape Awareness	786	393
TOTAL	14116	7058

	Total Allocation	First Semester Allocation
Category 13:		
Asian-American Law Students	608	304
Council of Black Student Leaders	1318	659
Black Law Student Association	4380	2190
Va. Law Women	1030	515
TOTAL	7336	3668
TOTAL	237662	118831

EXHIBIT 12

Constitution of *Wide Awake Productions*

Article 1: Purposes of *Wide Awake Productions* (Hereafter referred to as *Wide Awake.*)

1.) To publish a magazine of philosophical and religious expression.

2.) To facilitate discussion which fosters an atmosphere of sensitivity to and tolerance of Christian viewpoints.

3.) To provide a unifying focus for Christians of multicultural backgrounds.

Article 2: Membership of *Wide Awake.*

1.) Wide Awake does not discriminate in its membership on the basis of sex, race, color, religion, handicap, national origin, or sexual orientation.

2.) Any person who contributes significantly to an issue of any *Wide Awake* publication or attends 78% of all meetings of the full membership for one semester shall be a full member of *Wide Awake.*

Article 3: Governing Bodies of *Wide Awake.*

The governing bodies of *Wide Awake* shall consist of the Executive Board and the Managing Board. The size and membership of each Board shall be determined jointly by the CEO and the Chairman of each Board.

1.) Executive Board: Responsible for the editorial content of all *Wide Awake* publications. Creates and executes the fiscal policy of *Wide Awake.*

2.) Managing Board: Responsible for the production and layout of all *Wide Awake* publications. Liases [sic] with University organizations.

Article 4: Officers of *Wide Awake*.

1.) Chief Executive Officer: Coordinates and supervises activities of the Managing and Executive Boards. Confirms appointments to and decisions of the Boards. Acts as Editor-in-Chief of all *Wide Awake* publications.

2.) Chairman of the Executive Board: Appoints members to the Executive Board. Presides over Executive Board. Acts as Executive Editor of all *Wide Awake* publications.

3.) Chairman of the Managing Board: Appoints members to the Managing Board. Presides over Managing Board. Acts as Managing Editor of all *Wide Awake* publications.

Article 5: Expenditures of *Wide Awake*.

Expenditures shall be made in accordance with fiscal policy developed by the Executive Board and approved by the CEO and Managing Board.

Article 6: Elections of *Wide Awake* Officers.

All officers shall be elected by a majority vote of the full members. Elections shall be held each spring semester by April 15. New officers will take office at the end of each spring semester. Elections will be carried out in accordance with rules adopted by the governing Boards and the CEO.

Article 7: Amendments

Amendments to this Constitution shall be composed by the governing Boards and the CEO and confirmed on a two-thirds vote of the full membership.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

(Title Omitted in Printing)

AFFIDAVIT OF RONALD J. STUMP

I, Ronald J. Stump, do hereby depose and state:

1. I am an Associate Dean of Students at the University of Virginia. I have served in this position since 1985. My previous experience includes serving as Director of Student Activities at Michigan State University, and as an Assistant Dean of Students and Director of Student Activities at Northern Michigan University.

2. My responsibilities as Associate Dean of Students include providing guidance to the Student Council in allocating student activity fee monies among eligible student organizations and activities in accordance with the "University Student Activity Fee Statement of Purpose and Funding Guidelines ("SAF Guidelines"), a policy the University Board of Visitors has adopted and charged the Student Council to administer. I also serve as chairman of the Student Activities Committee, a panel comprised of students, faculty, and administrators that provides oversight and hears appeals of student organizations which contest denial of funding.

3. Under the SAF Guidelines, the "purpose of the student activity fee is to provide financial support for student organizations that are related to the educational purpose of the University of Virgina." Both the Student Council and the Student Activities Committee are specifically directed to administer the limited SAF funds "in a manner consistent with the educational purpose of the University

as well as with State and Federal law" (*See* University SAF Guidelines, p. 1).

4. Student activity fees are public funds that are derived from a compulsory fee collected annually from each full-time student as part of their tuition and fees. The total amount of SAF funds available for allocation each year among student organizations is obviously limited, and is invariably substantially less than the aggregate amount requested by eligible student organizations. For example, for the 1990-91 academic year 135 student organizations requested an aggregate amount of $501,277, while only $402,028 was available for allocation.

5. The SAF Funding Guidelines were originally adopted by the Board of Visitors in 1970. The SAF Funding Guidelines were revised in 1973, 1978, 1980 and 1991. Since the policy was originally adopted, and currently, the following student organizations have been deemed *incligible* to receive SAF funds: fraternities, sororities, honor societies, political organizations, religious organizations, and organizations whose membership is exclusionary in nature or engage in unlawful discrimination. Additionally, certain expenditures and activities are deemed not related to the educational purpose of the University are not eligible for funding: honoraria or similar fees; religious activities; social entertainment or related expenses; philanthropic contributions and activities; political activities; and activities which would jeopardize the University's tax exempt status. (*See* University SAF Guidelines, p. 2.)

6. The University has a procedure, separate from the SAF funding system, for entering into a relationship with student organizations. All student organizations which execute an annual agreement with the University become Contracted Independent Organizations (CIOs) and thereby are entitled to access and use of University facilities, for the organizations' meetings, functions, and programs.

7. In order to apply for SAF funds, a student organization must be a CIO. However, to be entitled to receive

SAF funds the CIO must further satisfy the eligibility criteria separately set forth in the University SAF Guidelines. For academic year 1990-91, 343 student organizations qualified as CIOs. Of the 343 CIOs, 135 student organizations applied for SAF funds in 1990-91 and 118 were allocated SAF monies.

8. In determining the eligibility of CIOs for SAF funds, the Student Council (as a delegated agent of the Board of Visitors) customarily examines written and oral statements of applying organizations to ensure compliance with criteria contained in the University SAF Guidelines. Such an examination typically entails review of the organization's purpose and objectives as embodied in constitutions, charters, publications, and related amplifying statements of officers during the Student Council allocation hearings. In certain instances the examination extends beyond a review of documents and statements that reveal an organization's purpose: "In determining cases of discrimination, it is not sufficient to look merely to the constitution of an organization but to its actual practices and operations." (*See* University SAF Guidelines, p. 2.) The University does not approve the constitutions or charters of student organizations.

9. In January 1991, the Wide Awake student organization applied for SAF funds to support the publication of the *Wide Awake* magazine. The organization requested funding in the amount of $5,862.00 for the 1991-92 academic year. This was the first and only application for SAF funding that Wide Awake submitted to Student Council. There is no assurance that even if eligible for funding *Wide Awake* would have received the entire requested amount. Furthermore, the funded allocation is not given to an organization to be put into its own savings or checking accounts. The money is held by the University, and disbursed by the Student Activities Business Manager through a voucher system.

10. The Student Council Appropriations Committee, following a review of Wide Awake's constitution and its

first issue of the *Wide Awake* magazine (Nov./Dec. 1990), decided not to fund the organization's request because the publication was determined to be a "religious activity" and thus not eligible for funding under the SAF Guidelines. The rationale for the Committee's decision was communicated in a letter dated February 26, 1991, from Cynthia J. Wilbricht, Student Council Vice President for Student Organizations, to Ronald W. Rosenberger, Chief Executive Editor of Wide Awake Productions.

11. On or about March 3, 1991, Wide Awake timely appealed the Student Council's Appropriation Committee's decision to the full Student Council. At its March 19, 1991 meeting, the Student Council voted to uphold the funding denial decision.

12. Wide Awake subsequently submitted an appeal to the Student Activities Committee, which held a public hearing on April 8, 1991. The Student Activities Committee voted unanimously that *Wide Awake* was ineligible to receive SAF funding. I notified Mr. Rosenberger of the Committee's decision in a letter dated April 16, 1991, which stated in part:

> ". . . After reviewing your organization's constitution, copies of the magazine's first two editions, and the arguments presented at last week's appeal by Wide Awake Productions and by Student Council, the committee determined that the Wide Awake magazine could not be funded as it is a religious activity. In effect, the Student Activities Committee fully supports the decision and reasoning provided to you in the February 26 letter from Ms. Cyndi Wilbricht. As noted in Ms. Wilbricht's letter, Wide Awake Productions may still print and distribute copies of the magazine and as a CIO has full and equal access to other University facilities and services. . . ."

13. The decision not to fund the *Wide Awake* publication was based on the group's intent as stated in their constitution and in the first edition of the organization's

magazine. The editor stated that *Wide Awake's* mission was to challenge Christians to live according to their faith and to encourage students to consider what a personal relationship with Jesus Christ means. In public statements during the organization's application and appeal process, *Wide Awake* editors also acknowledged that the magazine has "a Christian focus and a Christian editorial thrust," that the editors want the magazine "to glorify God," and that the organization "opens each meeting with a prayer."

14. Other student groups like Black Voices, the C. S. Lewis Society, the Jewish Law Students Association, and the Muslim Students Association have qualified in the past for SAF funding as "cultural organizations."

15. Black Voices was funded in 1990-91 but did not apply for funding in 1991-92 because the organization's officers felt they had become a religious organzation. During the 1990-91 appropriation process which occurred in the Spring of 1990, the Black Voices representative was asked if the group engaged in religious activity. The representative did say yes. In further discussion which included the definition of religious activity used by the Student Council appropriation committee, the representative said no.

16. During the Fall of 1990, I met with the Black Voices' President and talked with him about the group's activities and whether they were religious. He said the group itself had begun to consider that maybe they had drifted away from simply singing Gospel music as a Black cultural activity and more toward a religious group. They now were praying at practices and encouraging members to be more of a model of faith. He said the group as a whole was going to make a decision. Later in the Fall semester, he said the group decided they wished to be a religious group and would change their constitution to reflect this decision. The group's constitution was, in fact, changed. Consequently, Black Voices did not apply for funding for 1991-92.

17. Student Council has funded publications and media groups which have expressed religious opinions and similar matter as an incidental part of their activities. The reason for these groups' existence and the nature of the activities themselves are not to evangelize or to principally express a religious perspective.

18. Wide Awake Productions has not been denied access to space, equipment, and facilities at the University of Virginia. As a CIO, Wide Awake has been and is accorded the same access and use of University facilities as other CIOs. Also, use of computers, printers, and other special equipment in Peabody Hall is open to all groups which produce a publication including *Wide Awake*.

19. There are currently about 17 religious organizations qualified as CIOs, none of which have sought or received SAF monies.

/s/ Ronald J. Stump
RONALD J. STUMP

[Notarization Omitted in Printing]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

(Title Omitted in Printing)

AFFIDAVIT OF TREVON GROSS

I, Trevon Gross, do hereby depose and state:

1. I was a student at the University of Virginia, having graduated from the College of Arts and Sciences in May, 1991. For four years, I was a member of Black Voices, a student organization that has been recognized as a Contracted Independent Organization ("CIO") at the University. I served as Vice-President for Musical Development of Black Voices during the 1990-91 academic year.

2. Black Voices was established, to my knowledge, about 19 years ago. During my tenure as vice-president of the organization (and currently, I believe), Black Voices has had about 130 members.

3. In 1990-91, the organization sought and received funding support from the Student Activity Fee administered by the Student Council in accordance with the Student Activity Fee Guidelines adopted by the Board of Visitors ("SAF Guidelines"). At the time, when the organization applied for SAF funds, the purpose of Black Voices, as stated in the organization's Constitution attached to this affidavit as Exhibit A, was "to invite individuals to congregate for the intent of singing gospel and contemporary religious music." The SAF funds granted to Black Voices for the 1990-91 academic year were used to cover the costs of equipment and apparel for the or-

ganization and travel expenses to attend out-of-state choir events.

4. When Black Voices sought funding for the 1990-91 academic year, it did so as a "cultural organization." In response to a question raised during a Student Council Appropriations Committee Hearing, then President Brad Braxton remarked that Black Voices occasionally engaged in religious activities. However, upon further discussion of the applicable definition of "religious activity" under the SAF Guidelines, Mr. Braxton clarified that the organization was a "cultural activity," and not a "religious activity."

5. During the Fall of 1990 members of Black Voices engaged in internal discussion about the main purpose of the organization. Some members felt that the organization should confine itself to cultural activities, while other members felt that the focus of the organization was shifting from simply singing gospel music to assuming a more religious character. During rehearsal meetings, for example, the group was periodically engaging in prayer and encouraging members to be more of a model of faith.

6. As a consequence of the organization's internal discussion, Black Voices' members voted to adopt a new constitution in the early Spring, 1991 semester. That Constitution, which serves as the Black Voices' current charter, now states the purpose of the organization is "to provide an opportunity for people to assemble in Christian fellowship and song. Moreover, by singing this music, the choir aims to share the Afro-American culture with others as well as express spiritual principles. . . . Black Voices represents God, the Afro-American culture at the University." A copy of the organization's current condition is attached to this affidavit as Exhibit B.

7. Because of the organization's deliberate decision to shift its purpose to one that would be acknowledged as a religious activity, Black Voices did not seek SAF funds for the 1991-92 year. Nor, to my knowledge, would the

organization so qualify under the SAF Guidelines, which exclude religious organizations and religious activities from SAF funding.

/s/ Trevon Gross
TREVON GROSS

[Notarization Omitted in Printing]

Constitution
Black Voices of the University of Virginia

Article I:

NAME. The official name of this organization is Black Voices of the University of Virginia.

Article II:

Purpose. The purpose of Black Voices is to invite individuals to congregate for the intent of singing gospel and contemporary religious music. Black Voices' main objective is to carry this music into the university and residential communities.

Article III:

Membership. Black Voices is open to anyone that is interested in volunteering their musical abilities to the organization. Black Voices does not discriminate on the basis of race, color, religion, national origin, political affiliation, handicap or sex. This policy complies with the requirements of the Virginia Constitution, Article I, Section 11, Titles VI and VII of the Civil Rights Acts of 1964, as amended and the Rehabilitation Act of 1973.

Article IV:

Officers. Officers of Black Voices must be registered officially with the University of Virginia. The offices are as follows:

President:

To serve as a chief executive.

Vice President:

Acts as president in the absence of the president.

Treasurer:

To keep financial records of Black Voices and make necessary deposits and withdrawals of the funds.

Co Treasurer:

To assist the treasurer in his/her duties.

Secretary:

To draft letters, respond to letters and make arrangements for engagements through correspondence.

Dues/Attendance Clerk:

To keep a tentative record of present dues paying members and their attendance at rehearsals and engagements.

The above named offices constitute a board that shall work together as a governing body. They have the power to make policies and have control of all expenditures.

Article V:

Elections. The offices of President, Vice President, Treasurer, Co Treasurer, Secretary and Dues/Attendance Clerk shall be occupied through the parliamentary procedure.

Two thirds of the voting body (official dues paying students) is needed to elect an officer. The term for each office is one year.

Section 1. The position of committee chairperson shall be filled on a voluntary basis. Persons who serve on the committee shall also be selected on a voluntary basis. The size of the committee shall depend on the service the committee is providing and will be left up to the discretion of the committee chairperson.

Section 2. The removal of any officer or chairperson shall be discussed by the board members and brought before the entire body of Black Voices for discussion. After discussion there will be a vote and the major-

ity decision will decide on the outcome of the individual in question.

Article VI:

Committees. The Board (President, Vice President, Treasurer, Co Treasurer, Secretary and Dues/ Attendance Clerk) shall preside as a standing committee and will discuss major issues (finances, engagements) concerning the welfare of Black Voices. This committee shall function as a governing body.

Article VII:

Meetings. Black Voices meets on every Thursday (excluding student holidays and summertime) for two hours in the evening. This rehearsal is conducted in the music department.

Section 1. The Board shall meet once every month (except student holidays and summertime) to discuss business at hand. This meeting's time and place shall be agreed upon by the Board members.

Article VIII:

Finances. Each member is expected to contribute ten dollars as dues.

Section 1. Each member is asked to submit a patron's list with contributions from persons not in the choir.

Section 2. Fund raising projects will require cooperation and support from all members. Members will volunteer to serve on different projects.

Section 3. All funds, self generated and allocated by student council shall be used to purchase equipment, uniforms, and pay for travel expenses for Black Voices and any hired musicians, directors, etc.

Section 4. Monies will be used only after members vote. Only students of the university are allowed to vote on monies allocated by student council.

Section 5. All funds are to be used in a non discriminatory fashion.

Article IX:

Amendments and By Laws. Permission is granted to amend the preceding articles with the consensus of two thirds of the voting members.

CONSTITUTION OF BLACK VOICES OF THE UNIVERSITY OF VIRGINIA

Article I:

Purpose

Black Voices of the University of Virginia is a choir that sings music of the African-American culture (i.e. anthems, spirituals, classical music, contemporary gospel, etc.). The purpose of this organization is to provide an opportunity for people to assemble in Christian fellowship and song. Moreover, by singing this music, the choir aims to share the African-American culture with others as well as express spiritual principles.

Rendering music at the University of Virginia and elsewhere, Black Voices provides an excellent opportunity for University of Virginia students to interact with residents of the Charlottesville-Albermarle communities, other college choirs, and each other in a setting not provided by any other organization on Grounds. Black Voices represents God, the African-American culture and the University.

Article II:

Membership

Although the membership is largely composed of University students, non-students are welcome. Membership is on a semesterly basis and is contingent upon payment of dues and adherence to the established attendance policy. Black Voices does *not* discriminate on the basis of race, creed, color, sex, religion or national origin.

Article III:

Meetings

Black Voices will hold regular rehearsals. Time and location of rehearsals and other meetings will be

determined by the Executive Board. The Executive Board will meet periodically, as deemed necessary. Six of the ten executive board members will determine a quorum.

Article IV:

Finances

Each member will be expected to pay non-refundable dues each semester. The amount of and due date for dues will be determined by the Executive Board.

Article V:

Officers and Job Descriptions

Executive Board

A. The Executive Board will consist of the following officers: President, Vice President for Administration, Vice President for Musical Development, Secretary, Membership Director, Co-Treasurers, Sergeant at Arms, Materiels [sic] Manager and Historian.

B. The Board will be responsible for the administrative aspects of the choir.

President

A. Will be the Chief Executive Officer and chief spokesperson of the organization.

B. Will preside over the Executive Board and all of its subsidiary activities as an ex officio member.

C. Will have the power to delegate and to appoint offices and ad hoc committees as deemed necessary.

D. Will be responsible for presiding over all meetings and rehearsals of the choir.

Vice President for Administration

A. Will develop and implement the administrative aspects of the choir. This will include, but not be limited to, engagement and rehearsal attendance policies.

B. Will oversee the following members of the Executive Board; 1) Secretary; 2) Historian; and 3) Sergeant at Arms.

C. Will coordinate performance dates for Black Voices in conjunction with the Musical Committee.

D. Will assume the role and responsibilities of the President in that officer's absence.

E. Will undertake any additional duties as deemed necessary by the Executive Board to ensure the welfare of Black Voices.

F. Will report directly to the President.

Vice President for Musical Development

A. Will serve as chair of the Music Committee.

B. Will specifically oversee the activities of the Music Committee, and shall make all decisions in conjunction with said committee concerning the musical aspects of the choir and its engagements.

C. Will work with the Vice President for Administration and the Music Committee in the development of programs for engagements and concerts.

D. Will assume the role and responsibilities of the President in the absence of both the President and Vice President for Administration.

E. Will report directly to the President.

Secretary

A. Will be responsible for all correspondence.

B. Will take minutes at all Executive Board meetings and make them available to choir members upon request.

C. Will be responsible for announcements and publicity concerning the choir's engagements and concerts.

D. Will report directly to the Vice President for Administration.

Membership Director

A. Will be chair of the Membership Concerns Committee as an ex officio member (except in the case of a tie, the chair will be the deciding vote) and will serve as liaison between that committee and the Executive Board.

B. Will be responsible for developing and maintaining accurate membership lists and attendance records.

C. Will be responsible for maintaining a current membership directory.

D. Will report directly to the President.

Co-Treasurers

A. Will be responsible for all financial records, deposits of all monies, disbursements concerning the choir, collecting dues and for giving financial reports.

B. Will work with the Executive Board to develop a budget.

C. Will be responsible for presentation of the budget at the Student Council Appropriations Process.

D. Will be responsible for the administrative control of the finances of the choir.

E. Will report directly to the President.

Sergeant at Arms

A. Will be responsible for running orderly meetings and rehearsals.

B. Will serve as Parliamentarian at all meetings of the Executive board and choir.

C. Will report directly to the Vice President for Administration.

Materiels Manager

A. Will be responsible for the maintenance, distribution and collection of robes.

B. Will be responsible for the maintenance, storage, transportation and set up of musical equipment at all Black Voices engagements.

C. Will report directly to the President.

Historian

A. Will be responsible for developing and maintaining a scrapbook of Black Voices for that one year.

B. Will report directly to the Vice President for Administration.

Article VI:

Committees

Music Committee

A. Will consist of the following persons: Vice President for Musical Development, directors, musicians, section leaders, technical assistant, secretary and assistant secretary to the committee.

B. Will be chaired by the Vice President for Musical Development who will work in conjunction with said committee regarding the musical development of the choir.

C. The Music Committee will meet at the discretion of the Vice President for Musical Development.

D. Persons interested in becoming members of this committee will be required to submit a letter of intent to the committee which will then select members according to its established selection process.

Membership Concerns Committee

A. Will serve as the liaison between the Executive Board and the members at-large.

B. Will be chaired by the Membership Director.

C. Will consist of two elected representatives from each choral section. Representatives will be responsible for presenting the members' ideas and concerns to the committee which will in turn relay them to the Executive Board.

D. The recommendations made by the committee will be subject to the approval of the Executive Board.

Article VII:

Elections and Removal of Officers

Section I

Officers will be elected by a simple majority vote of the members in good standing present. (Qualifications for good standing will be determined by the Exectuive Board.) Elections will be held during the month of February at the discretion of the Executive

Board. Elections will be conducted by an ad hoc committee appointed by the President.

Elected officers will be installed at the last said meeting of the choir, and the term of office will be from that installation until the next installation of newly elected officers.

Section II

Officers may resign or be removed from office for failure to pay dues or to execute the office's proper duties. In the case of the latter, the Executive Board, by a majority vote, may recommend the dismissal of that officer to the choir. By two-thirds vote of the choir, the officer will then be dismissed.

THE CONSTITUTION MAY BE AMENDED BY ⅔ VOTE OF THE ENTIRE MEMBERSHIP.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

(Title Omitted in Printing)

AFFIDAVIT OF SAQUIB LAKHANI

I, Saquib Lakhani, do hereby depose and state:

1. I am a student at the University of Virginia and a member of the Muslim Students Association, a student organization that has been recognized as a Contracted Independent Organization ("CIO") of the University. I have been a member of the Muslim Students Association since September 1989, and I have served as President from November 1990 to November 1991.

2. As set forth in the constitution of the Muslim Students Association, which is attached as an exhibit to this Affidavit, the objective of the organization "is to aid Muslim students during their stay at the University and to promote a better understanding of Islam to the University community." The principal activities of the Muslim Students Association are to sponsor speakers and, as a recent initiative, to publish a news magazine, both of which are designed to promote Islamic culture. For example, last week the organization sponsored a speaker who made a presentation on the "Western Misconceptions about Islam." The news magazine, which is scheduled to be published soon, will contain articles on calligraphy, a translation of a Persian poem, news items extracted from international newspapers, and recipes of Muslim cuisine.

3. The Muslim Students Association was established in December 1987. It currently has about 30 members. The organization meets about twice a month. The meet-

ings begin with the officers handling administrative business. Otherwise, they have no set agendas, rather they are essentially informal gatherings of students sharing a common cultural background. The meetings provide members an opportunity to share ideas and insights on subjects of mutual interest. For example, during the Gulf War members voiced their views and discusses [sic] their concerns.

4. At no time during the meetings do officers or members of the Muslim Students Association engage in any religious rituals or activities, read from religious texts, or recite prayers or invocations to a deity. Nor has the organization produced, published or distributed any religious pamphlets or publications among members or non-members.

5. The Muslim Students Organization sought and received funding support from the Student Activity Fee administered by the Student Council in accordance with the Student Activity Fee Guidelines adopted by the Board of Visitors ("SAF Guidelines"). For the 1989-90 academic year, the organization received $164. Because of a failure to meet the funding application deadline, the Muslim Students Association did not receive SAF funds for the 1990-91 academic year. The organization has obtained $264 in SAF funds for the current 1991-92 academic year. The organization applied for and was granted SAF funds in the above noted amounts as a "cultural organization" which is defined in the SAF Guidelines as "an organization which is primarily concerned with studying, promoting, and/or expressing racial, ethnic, or affinity group traditions, social forms, art and/or tastes."

6. To my knowledge, the Muslim Students Organization has not received any complaints that the organization engages in religious activities, that SAF funds are impermissibly used for religious activities, or that it is improperly classified as a "cultural organization" under the

SAF Guidelines, except for the complaint raised by officers of the *Wide Awake* student organization in the course of the organization's unsuccessful quest for SAF funding.

/s/ Saquib Lakhani
SAQUIB LAKHANI

[Notarization Omitted in Printing]

CONSTITUTION OF THE MUSLIM STUDENTS ASSOCIATION AT THE UNIVERSITY OF VIRGINIA

as submitted to Student Council on December 10, 1987.

ARTICLE I. Title of the organization

The Muslim Students Association at the University of Virginia.

ARTICLE II. Objectives of the organization.

The objective of the MSA at Uva is to aid Muslim students during their stay at the University and to promote a better understanding of Islam to the University Community.

ARTICLE III. Membership.

Anybody who wishes to participate will be allowed to do so. Voting members will be restricted to those who pay membership dues.

ARTICLE IV. Officers.

There shall be seven elected officers forming the executive committee. This committee will be in charge of all organization activities. The seven posts are as follows:

1. The president handles all external affairs of the organization and carries out programmes of the organization as spelled out by the executive committee. The president is also authorized to spend the organization's money.

2. The vice-president acts as president in the absence of the president.

3. The secretary records the minutes of the meeting and organizes membership lists.

4. The treasurer keeps the accounts of the organization and is authorized to spend the organization's money.

5. The organizing secretary will coordinate the activities of the organization with the general membership.

6. There will be two (2) members-at-large who will complete the executive committee.

ARTICLE V. Election and removal of officers.

Elections will be held in March each year. Nominations for each position will be accepted, and the nominee who receives the most votes will become the officer until the elections of the following year. A two-thirds vote of all the members present excluding the officer in question is required to remove him/her from office. Immediately after the removal of any officer, the above election procedure will be used to fill the vacant post. A quorum of one-third of all voting members must be present to undertake the election or removal process.

ARTICLE VI. Finances.

To gain voting member status, a member must pay one dollar in annual dues. The treasurer and the president are authorized to spend the money of the organization. A simple majority of at least one-third of all voting members will be required to approve a budget prepared by the executive committee.

ARTICLE VII. Amendments to the constitution.

A two-thirds vote of at least one-third of all voting members is required to amend the constitution.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

(Title Omitted in Printing)

AFFIDAVIT OF MICHAEL TOW

I, Michael Tow, do hereby depose and state:

1. I am a student at the University of Virginia and currently serve as the President of the Jewish Law Students Association, a student organization that has been recognized as a Contracted Independent Organization ("CIO") of the University. I have been a member of this organization since August 1990 and I have served as an officer for the past four months.

2. The purpose of the Jewish Law Students Association is set forth in the organization's by-laws which are attached as an exhibit to this Affidavit. Succinctly, the purpose is to represent and promote the interests of Jewish law students through a series of social, educational, and cultural activities. Specifically, the organization sponsors (or co-sponsors with other groups) speakers on a variety of topics of interest to Jewish law students and law students at-large; arranges luncheon presentations by professors from the Law School and the Graduate Business School; and coordinates social acivities. Examples of presentations the organization has sponsored include lectures on: "Complex Tort Litigation" by Kenneth Feinberg, and on "Judaism and Homosexual Rights" by Rabbi David Kaye. This Spring the organization plans to host the attorney who represents the Baltimore Orioles.

3. The Jewish Law Students Association currently has about 75 members, and three officers including myself.

No dues are charged members. The organization is open to any interested law students; the current membership includes several non-Jewish students, one of whom also serves as Vice-President. The officers meet periodically, about four times each semester, to plan the organization's activities. At no time during these meetings does the organization engage in any religious prayer or invocation to a deity or read from any religious texts. Nor has the organization produced, published, or distributed any religious pamphlets or publications among its officers or members. Furthermore, no religious symbols are placed in any rooms during the conduct of the officers' meetings.

4. The Jewish Law Students Association over the past three years since the organization was established sought and received funding support from the Student Activity Fee administered by the Student Council in accordance with the guidelines adopted by the Board of Visitors ("SAF Guidelines"). The organization received $1,134 for the 1990-91 academic year. Because of a failure to meet the application deadline, the organization did not receive SAF funds for the current 1991-92 academic year. The organization applied for and received SAF funds in this amount as a "cultural organization," which is defined in the SAF Guidelines as "an organization which is primarily concerned with studying, promoting, and/or expressing racial, ethnic, or affinity group traditions, social forms, art and/or tastes."

5. The SAF funds the Jewish Law Students Association received in 1990-91 were used solely to support expenses the organization incurred for photocopying, printing, and registration fees and travel costs associated with a trip to the national convention of the National Jewish Law Students' Network. At no time has the organization used any SAF monies for religious activities, as that term is defined in the SAF Guidelines ("an activity which primarily promotes or manifests a particular belief(s) in or about a deity or an ultimate reality").

6. Each year the Jewish Law Students Association sponsors a "holiday dinner" known as the Seder. This event is an incidental part of the organization's activities. The Seder dinner is held off grounds and both Jewish and non-Jewish students attend. The cost of the Seder dinner is basically covered by participation fees paid by those attending. No SAF monies are used to cover the costs of the Seder dinner.

7. To my knowledge, the Jewish Law Students Association has not received any complaints that the organization engages in religious activities, that SAF funds are impermissibly used for religious activities, or that it is improperly classified as a "cultural organization" under the SAF Guidelines, except for the complaint raised by officers of the *Wide Awake* student organization in the course of the organization's unsuccessful quest for SAF funding.

/s/ Michael H. Tow
MICHAEL TOW

[Notarization Omitted in Printing]

By-Laws
of the
University of Virginia
Jewish Law Students Association

I. *Name.* The name of this organization shall be the University of Virginia Jewish Law Students Association (JLSA).

II. *Purposes.* The purposes of this organization shall be:

1. To encourage Jewish law students to participate in Jewish activities no matter what their religious background.

2. To improve the quality of Jewish life in the Law School, on Grounds, and in the surrounding community. To represent the interests of Jewish law students. To do legal work which will help promote the interests of the Jewish community.

3. To be a focal point for Jewish activities at the Law School and to organize such activities.

4. *Tax Exempt Status.* Other sections of these by-laws notwithstanding, the JLSA shall engage in no activities which would make it ineligible for tax exempt status. To that end, the JLSA is organized exclusively for charitable, religious, and educational purposes. No part of the net earnings of the JLSA shall inure to the benefit of, or be distributable to its members, officers, or other private persons except as reasonable compensation for services rendered or expenses incurred. The JLSA will not engage in any activities attempting to influence legislation, nor will it directly or indirectly participate or intervene (including publishing or distributing statements) in any political campaigns on behalf of any candidate for public office or any other activity not within the

charitable, religious, and educational purposes set out above. Upon the dissolution of the JLSA, if such dissolution occurs, all of its assets, net of its liabilities (specifically including its liabilities, if any, to the University of Virginia or the Student Council of the University of Virginia) shall be distributed to Jewish organizations operated exclusively for charitable, religious, or educational purposes and which shall at the time qualify as tax-exempt organizations under the Internal Revenue Code.

5. To enhance the Law School administration and faculty's awareness of the special needs and interests of Jewish law students.

6. To participate in the National Jewish Law Students Network.

7. To enhance the understanding of all law students at the Law School of the culture and religion of their Jewish classmates.

III. *Membership.*

1. Membership shall be open to all members of the Law School community. The JLSA shall actively seek the membership of Jewish law students. Non-Jewish law students who wish to join the JLSA may do so. Other graduate students at the University of Virginia may participate in JLSA activities as non-members. Only JLSA members may vote and hold office.

IV. *Officers.*

1. Each year the membership shall elect four officers: President, Vice-President, Treasurer, and Secretary. Elections shall be held in the spring semester at a duly called general meeting and shall be run by the President. The terms of the officers shall start upon a date fixed by resolution at the general meeting. They shall serve until their successors are chosen and the term of those successors begins. Any vacancies among the officers shall be filled by a vote of the Executive Board for the remainder of the current school year. Officers may be removed by a two-thirds vote of the Executive Board.

2. *President.* The President shall be the chief executive officer of the JLSA. She/he shall call and chair all Executive Board and general meetings, appoint committees and their chairs, be the organization's representative to the National Jewish Law Students Network Executive Board, and serve as the spokesperson for the JLSA to the Law School community and to the public at large. The President shall have primary responsibility for developing the next generation of leadership for the JLSA.

3. *Vice-President.* The Vice-President shall chair all meetings in the absence of the president and shall become President upon the resignation or removal of the President. She/he shall assist the President in all JLSA activities.

4. *Treasurer.* The Treasurer shall be responsible for all financial affairs of the JLSA, including the raising and expenditure of funds. She/he shall have sole authority to sign checks on the JLSA account. However, she/he shall authorize the expenditure of sums over ten dollars only if there has been prior authorization by the Executive Board.

5. *Secretary.* The Secretary shall be responsible for maintaining the records of the JLSA and for keeping minutes of all general and Executive Board meetings.

V. *Executive Board.*

1. The Executive Board shall consist of all the elected JLSA officers and any JLSA members unanimously elected by the officers of the JLSA.

2. Anyone may attend Executive Board meetings, which shall be held periodically after notice, but such notice may be waived by a vote of the majority of the Executive Board.

3. The Executive Board shall authorize all projects and approve all expenditures in excess of ten dollars. It shall advise the President on all issues which come before the JLSA.

4. The Executive Board may, on its own behalf only, take a stand on an issue of interest to Jewish law students, only by unanimous agreement of the members of the Executive Board. All such communications shall be signed, "The Executive Board of the Jewish Law Students Association".

5. No individual may take a stand on behalf of the JLSA without the unanimous consent of the Executive Board.

6. The Executive Board, may, on behalf of the JLSA as a whole, take a stand on an issue of interest to Jewish law students, only by unanimous agreement of the members of the Executive Board *and* by the agreement of 30% (or 30 in number, whichever is greater) of all Jewish law students at the University of Virginia. The President shall keep and maintain a list of the signatures of all those so consenting. All such communications shall be signed, "Jewish Law Students Association".

VI. *General Meetings.*

1. General Meetings of the entire membership shall be held whenever called by the President, but in any case no less frequently than once each year in the spring for the purpose of electing officers.

2. Except as provided in Paragraph V.4, 5, and 6, a quorum for doing business or holding elections at a general meeting shall be 10% of the membership,

or the current total number of the membership of the Executive Board, whichever is less.

3. General meetings shall only be called if reasonable notice has been given of the time and place of the meeting.

VII. *Adoption and Amendment.* These by-laws shall be adopted and may be amended by a two-thirds vote of those present at a duly called General Meeting.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

(Title Omitted in Printing)

AFFIDAVIT OF JAMES KOZLOSKI

I, James Kozloski, do hereby depose and state:

1. I am a student at the University of Virginia and currently serve as the President of the C. S. Lewis Society, a student organization that has been recognized as a Contracted Independent Organization ("CIO") of the University. I have been a member of this organization since September 1989 and I have served as the President for the past two years.

2. As stated in the constitution of the C. S. Lewis Society, the purpose of the organization is "to promote interest in, discussion of various literary, moral, and philosophical topics, with particular emphasis on the work of the 'Oxford Christians'." Despite the reference to "Oxford Christians" in the constitution that was prepared when the C. S. Lewis Society was formed three years ago, the purpose and focus of this study group is currently—and has been for the past two years that I have served as President—broader. In other words, there is no particular emphasis on the study of the Oxford Christians. Rather, the main purpose of the C. S. Lewis Society is to study and discuss topics that cross several disciplines.

3. The organization's activities essentially entail weekly meetings of the group's 15-25 members, during which they discuss essays, poems, and excerpts of novels by such authors as Emily Dickinson, Nietzsche, Dostoyevski, and C. S. Lewis. The organization often invites University professors to lead the discussion groups, including

professors from the English Department, the Religious Studies Department, the Philosophy Department, and the History Department.

4. At no time during the meetings of the C. S. Lewis Society does the organization engage in any religious prayer or invocation to deity or read from any religious texts. Nor has the organization produced, published, or distributed any religious pamphlets or publications among its officers or members. Furthermore, no religious symbols are placed in any rooms where meetings are held.

5. The C. S. Lewis Society sought and received funding support from the Student Activity Fee administered by the Student Council in accordance with the Student Activity Fee Guidelines adopted by the Board of Visitors ("SAF Guidelines"). The organization received $96 in 1989-90, $220 in 1990-91, and currently receives $220 for 1991-92. This SAF funding support is used exclusively to cover photocopying costs for study and discussion materials circulated among the members.

6. The C. S. Lewis Society applied for and was granted the SAF funds as a "cultural organization" which is defined in the SAF Guidelines as "an organization which is primarily concerned with studying, promoting, and/or expressing racial, ethnic, or affinity group traditions, social forms, art and/or tastes."

7. To my knowledge, the C. S. Lewis Society has not received any complaints that the organization engages in religious activities, that SAF funds are used for religious activities, or that it is improperly classified as a "cultural organization" under the SAF Guidelines, except for the complaint raised by officers of the *Wide Awake* student organization in the course of the organization's unsuccessful quest for SAF funding.

/s/ James Kozloski
JAMES KOZLOSKI

[Notarization Omitted in Printing]